ILLINOIS DEPARTMENT OF MINES AND MINERALS

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LAND RECLAMATION DIVISION MEMORANDUM NO. 89-13

TO: Recipients of Illinois Permanent Program Rules and Regulations

FROM: Paul J. Ehret, Supervisor
Land Reclamation Division

DATE: August 9, 1989

RE: Proposed Amendments to 62 Ill. Adm. Code 1700-1850

Enclosed is a copy of the Department's proposed rulemaking as published in the Illinois Register on July 28, 1989. The proposed rulemaking is designed to make Illinois' rules consistent with the federal rules and to enhance clarity.

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Areas Designated by Act of Congress

) Code Citation: 62 Ill. Adm. Code 1761

3 Section Number: Proposed Action

1761.11	Amendment
1761.12	Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On June 9, 1987, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying Illinois rules concerning historic properties that must be amended in order to be no less effective than their Federal counterparts. Although the Department initiated rulemaking in a timely manner, the Department delayed promulgating final historic properties rules given the existence of litigation challenging the validity of the underlying Federal rules. By letter dated January 30, 1989, OSMRE advised the Department that the pending litigation concerning the Federal historic properties rules can no longer serve to delay the State rulemaking process.

On October 25, 1988, OSMRE conditionally approved the Department's amendments to its permanent regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). See 53 Fed. Reg. 43112 (October 25, 1988). OSMRE's approval of Illinois' amendments to its regulatory program was conditioned upon the submittal of new amendments designed to correct defects identified in Illinois' rules.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

The following discussion describes the Department's proposed amendments to Part 1761 in response to these OSMRE directives:

Section 1761.11 sets forth an overview of areas where mining is prohibited or limited. The proposed amendments to Section 1761.11

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serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 761.11, by removing the quarter-mile restriction on the maximum width of wild or scenic river study corridors and by extending the Section 1761.11 prohibitions/limitations to privately-owned places listed on the National Register of Historic Places.

Section 1761.12 sets forth the Department's procedures for determining if mining in an area should be prohibited or limited. The proposed amendments to Section 1761.12 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 761.12, by extending the Section 1761.12 prohibitions/limitations to privately-owned places listed on the National Register of Historic Places.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

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Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1761
AREAS DESIGNATED BY ACT OF CONGRESS

Section
1761.1 Scope
1761.11 Areas Where Mining is Prohibited or Limited
1761.12 Procedures

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, para. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4933; amended at 11 Ill. Reg. 7976, effective July 1,1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1761.11 Areas Where Mining is Prohibited or Limited

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including~~y for~~ study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a))~~,~~ a ~~corridor extending not more than one-quarter (1/4) mile from each bank for the length of the segment being studied~~ or study rivers or study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress;

b) On any Federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary of the United States Department of the Interior (Secretary) finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and surface operations and impacts are incident to an underground coal mine;

c) On any lands which will adversely affect any publicly owned park or any ~~publicly owned~~ places included on the National Register of Historic Places, unless approved jointly by the Department and the Federal, State or local agency with jurisdiction over the park or

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places;

d) Within one hundred (100) feet measured horizontally of the outside right-of-way line of any public road, except:

1) Where mine access roads or haulage roads join such right of way lines; or

2) Where the Illinois Department of Mines and Minerals (Department) and the public road authority with jurisdiction over the road under Illinois law allow the public road to be relocated, closed, or the area affected, including surface areas impacted by planned subsidence, to be within one hundred (100) feet of such road, after:

A) Public notice and opportunity for a public hearing in accordance with Section 1761.12(c); and

B) Making a written finding that the interests of the affected public and landowners will be protected;

e) Within three hundred (300) feet measured horizontally, from any occupied dwelling in existence, under construction, or contracted for at the time of public notice, except when:

1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than three hundred (300) feet; or

2) The part of the mining operation which is within three hundred (300) feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

f) Within three hundred (300) feet measured horizontally of any public building, school, church, community or institutional building, or public park; or

g) Within one hundred (100) feet measured horizontally of a cemetery.

h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

DEPARTMENT OF MINES AND MINERALS

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Section 1761.12 Procedures

a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the Department shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 1761.11 on the lands which would be disturbed by the proposed operations.

b)

1) Where the proposed operation would be located on any lands listed in Section 1761.11(a), (f) or (g), the Department shall reject the application if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977.

2) If the Department is unable to determine whether the proposed operation is located within the boundaries of any of the lands in Section 1761.11(a) or closer than the limits provided in Section 1761.11(f) and (g), the Department shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty (30) days of receipt of the request. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of the notification in which to respond. The Department, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional thirty (30) days. If no response is received within 30-day period or within the extended period granted, the Department may make the necessary determination based on the information it has available.

c) Where the proposed mining operation is proposed to be conducted within one hundred (100) feet measured horizontally, of the outside right-of-way line of any public road (except as provided in Section 1761.11(d)(2)) or where the applicant proposes to relocate or close any public road, the Department and the public road authority with jurisdiction over the road under Illinois law shall:

1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

2) Provide public notice in a newspaper of general circulation of the affected locale of an opportunity for a public hearing in

the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two (2) weeks prior to the hearing; and

4) Make a written finding based upon information received at the public hearing within thirty (30) days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. No mining shall be allowed within one hundred (100) feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the Department and public road authority determines that the interests of the public and affected landowners will be protected.

d)

1) Where the proposed surface coal mining operations would be conducted within three hundred (300) feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within three hundred (300) feet of such dwelling, a new waiver shall not be required.

3)

A) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

B) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the three hundred (300) foot limit prior to the date of purchase.

e)

1) Where the Department determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any ~~publicly~~ ~~owned~~ place included in the National Register of Historic Places, the Department shall transmit to the Federal, State, or local agencies with jurisdiction over the publicly owned park or National Register place a copy of applicable parts of the permit application together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has thirty (30) days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Department, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional thirty (30) days. Failure to interpose an objection within thirty (30) days of the extended period granted shall constitute an approval of the proposed permit.

2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

f) If the Department determines that the proposed surface coal mining operation is not prohibited under Section 7.01 of the State Act and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 62 Ill. Adm. Code 1762 or 1764.

g) A determination by the Department that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 62 Ill. Adm. Code 1775.11 and 1775.13.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

2) Code Citation: 62 Ill. Adm. Code 1800

3) Section Number: Proposed Action

1800.21	Amendment
1800.40	Amendment
1800.60	Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

The Illinois Department of Mines and Minerals (Department) has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Mining Control and Reclamation Act of 1977. The following discussion describes the Department's proposed amendments to Part 1800 in response to these agency concerns:

Section 1800.21 sets forth the Department's requirements for collateral bonds, in conformance with 30 CFR 800.21. The Department proposes to amend Section 1800.21(b)(4) to ensure that the ten percent (10%) capital and surplus accounts limitation for letters of credit is applied on a cumulative rather than on an individual basis.

Section 1800.40 sets forth the Department's requirements for bond release, in conformance with 30 CFR 800.40. The Department proposes to amend Section 1800.40 as follows:

The thirty (30) day period for submitting the certificate of publication in Section 1800.40(a)(2) is burdensome to the operator. Even if the filing date and date of first publication occur on the same day, the operator would have at most eight (8) days to obtain the certificate from the newspaper publisher and forward it to the Department. Several operators pay for and receive such receipts from out-of-state addresses. If several days pass after filing the bond release application before the news ad is run, as in the case of a weekly paper, the thirty (30) day time period for publication and submission of the certificate may not be adequate. The operator has no control over the procedures and timeliness of the newspaper

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publisher in billing and/or providing a certificate of publication. Amending Section 1800.40(a)(2) to provide for a forty-five (45) day time frame is viewed as a reasonable compromise between the need for prompt submittal and these practical considerations.

The Department proposes to delete the reference to "informal conferences" in Section 1800.40(a)(2) since this particular procedure is not provided by any other subsection within Section 1800.40.

The word "receipt" in Section 1800.40(b)(1) should be replaced by the word "filing" to be consistent with other parts of this rule.

The thirty (30) day period in which to conduct the inspection set forth in Section 1800.40(b)(1) should be extended to sixty (60) days. As Section 1800.40(b)(1) now reads, the Department could receive requests for inspection, objections, etc. as late as the 30th day after the fourth news advertisement. It makes little sense to schedule the bond release inspection until all of these concerns are known. A sixty (60) day period would give an inspector a full work week in which to schedule the inspection following the end of the public comment period.

The proposed changes to Section 1800.40(b)(1) would necessitate changes in the time periods for the final bond release decision set forth in Section 1800.40(b)(2). The sixty (60) day period in Section 1800.40(b)(2) should be changed to ninety (90) days to allow the Department sufficient time to address any objections raised to the bond release application. In addition, a sixty (60) day notification period after a public hearing is needed given that current Section 1800.40(h) allows the hearing officer thirty (30) days after the closure of the hearing record to serve the Department with a final bond release decision. Clearly, the Department cannot issue its decision within thirty (30) days of the hearing if the hearing officer has thirty (30) days, plus some unknown number of days during which the record may be left open, before issuing a bond release decision. Changing the thirty (30) day time period to a sixty (60) day time frame would allow adequate time for the record to be left open and for the hearing officer officer to issue and serve his final administrative decision.

Section 1800.40(b)(2) should be amended to add the words "nearest municipality". This amendment would cause a certified mailing of the bond release decision to the nearest municipality at least thirty-five (35) days prior to the Department's issuance of the SCML-7 (bond release) form. By amending Section 1800.40(b)(2) in that manner, the Department would then delete Section 1800.40(e). The operator already sends a notice of proposed bond release to the nearest municipality. That notice, together with the existence of news advertisements and

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the filing of the bond release application in the county courthouse, provides ample notice to the public and makes Section 1800.40(e) redundant.

Using the same logic as that submitted in support of the proposed amendments for Section 1800.40(b)(1), the public hearing on a bond release application provided by current Section 1800.40(f) should only be held after the time period for requesting such a hearing has expired. There should not be a need for more than one administrative hearing on a bond release application. As the regulations now read a person could request a hearing promptly after reading the first news advertisement. A public hearing would be held based on this request within thirty (30) days although a second hearing request could be submitted within the thirty (30) day period after the last news advertisement. Thus, current Section 1800.40(f) should be amended to provide that a public hearing is held within sixty (60) days after receipt of the request for hearing.

All references to subsection (f) in Section 1800.40 would need to be changed to subsection (e) given the deletion of current subsection (e). In addition, current subsections (g) through (i) would have to be redesignated as, respectively, subsections (f) through (h).

Section 1800.60 sets forth the Department's requirements for liability insurance. The proposed amendments to Section 1800.60 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 800.60.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

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The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1800
BONDING AND INSURANCE REQUIREMENTS FOR
SURFACE COAL MINING AND RECLAMATION OPERATIONS

Section
1800.1 Scope and Purpose
1800.2 Objective (Repealed)
1800.4 Department Responsibilities
1800.5 Definitions
1800.11 Requirement to File a Bond
1800.12 Form of the Performance Bond
1800.13 Period of Liability
1800.14 Determination of Bond Amount
1800.15 Adjustment of Amount
1800.16 General Terms and Conditions of Bond
1800.17 Bonding Requirements for Underground Coal Mines and Long-term Coal-related Surface Facilities and Structures
1800.20 Surety Bonds
1800.21 Collateral Bonds
1800.30 Replacement of Bonds
1800.40 Requirement to Release Performance Bonds
1800.50 Forfeiture of Bonds
1800.60 Terms and Conditions for Liability Insurance

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9354; amended at 11 Ill. Reg. 7985, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1800.21 Collateral Bonds

a) Collateral bonds, except for letters of credit and cash accounts, shall be subject to the following conditions:

1) The Department shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in Sections 1800.30 and 1800.40.

2) The Department shall value collateral at its current market value, not at face value.

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3) The Department shall require that certificates of deposit be made payable to or assigned to the Department both in writing and upon the records of the bank issuing the certificates. If assigned, the Department shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.

4) The Department shall not accept an individual certificate of deposit in an amount in excess of one hundred thousand dollars ($100,000) or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

b) Letters of credit shall be subject to the following conditions:

1) The letter may only be issued by a bank organized or authorized to do business in the United States ("issuing bank"). If the issuing bank does not have an office for collection in Illinois, there shall be a confirming bank designated that is authorized to accept, negotiate and pay the letter upon presentment in Illinois.

2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Department if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

3) The letter of credit shall be payable to the Department upon demand, in part or in full, upon receipt from the Department of a notice of forfeiture issued in accordance with Section 1800.50.

4) The Department shall not accept a letter of credit in excess of ten percent (10%) of the issuing bank's total capital and surplus accounts, as certified by the President of the bank providing the letter of credit and as evidenced by the most recent quarterly Call Report provided to the Federal Deposit Insurance Corporation. The ten percent (10%) limit, as used in this subsection, shall be a cumulative total of all letters of credit submitted to the Department by any one issuing bank.

5) The letter of credit shall provide on its face that the Department, its lawful assigns, or the attorneys for the Department or its assigns, may sue, waive notice and process, appear on behalf of, and confess judgment against the issuing bank (and any confirming bank) in the event that the letter of credit is dishonored. The letter of credit shall be deemed to

be made in Sangamon County, Illinois, for the purpose of enforcement and any actions thereon shall be enforceable in the Courts of Illinois, and shall be construed under Illinois law.

c) Cash accounts shall be subject to the following conditions:

1) The Department may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Department. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with Section 1800.40.

2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the Department has approved the payment of interest to the permittee.

3) Certificates of deposit may be substituted for a cash account in accordance with subsection (a).

4) The Department shall not accept an individual cash account in an amount in excess of one hundred thousand dollars ($100,000) or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

d)

1) The estimated bond value of all collateral posted as assurance under Section 1800.21 shall be subject to a margin which is the ratio of bond value to market value, as determined by the Department. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the Department to complete reclamation.

2) The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Department at the time collateral is offered.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1800.40 Requirement to Release Performance Bonds

a) Bond release application.

1) The permittee may file an application with the Department for the release of all or part of a performance bond at any time.

2) Within ~~thirty~~ ~~(30)~~ forty-five (45) days after an application for bond release has been filed with the Department, the operator shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the Department to which written comments, objections, or requests for public hearings ~~and informal conferences~~ on the specific bond release may be submitted pursuant to subsection 1800.40~~(f)~~(e). In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

b) Inspection by Department.

1) Upon ~~receipt~~ filing of the bond release application, the Department shall, within ~~thirty~~ ~~(30)~~ sixty (60) days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the Department in making the bond release

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inspection. The Department may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

2) Within ~~sixty (60)~~ ninety (90) days from the filing of the bond release application, if no public hearing is held pursuant to subsection ~~(f)~~ (e), or, within ~~thirty (30)~~ sixty (60) days after a public hearing has been held pursuant to subsection ~~(f)~~ (e), the Department shall serve, by certified mail, the permittee, the nearest municipality, the surety, or other persons with an interest in bond collateral who have requested notification under Section 1800.21(e), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, its final administrative decision to release or not to release all or part of the performance bond.

c) The Department may release all or part of the bond for the entire permit area or incremental area if the Department is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

1) At the completion of Phase I, after the operator completes the backfilling, regrading (which includes the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, sixty (60) percent of the bond or collateral for the applicable area.

2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Department shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 6.08(d)(2) of the State Act for reestablishing revegetation. No part of the bond or deposit shall be released under subsection (c)(2) so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 3.10 of the State Act and by 62 Ill. Adm. Code 1816 or 1817 or until soil productivity for prime farmland has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management

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practices as determined from the soil survey performed pursuant to Section 2.02(a) of the State Act and 62 Ill. Adm. Code 1823. Where a silt dam is to be retained as a permanent impoundment pursuant to 62 Ill. Adm. Code 1816 or 1817, the Phase II portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the Department.

3) At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in 62 Ill. Adm. Code 1816.116 or 1817.116. However, no bond shall be fully released under subsection (c)(3) until the reclamation requirements of th State Act and the permit are fully met.

d) If the Department disapproves the application for release of the bond or portion thereof, the Department shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Section 1800.21(e), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing, pursuant to subsection (f).

e) ~~When any application for total or partial bond release is filed with the Department, the Department shall notify the municipality in which the surface coal mining operation is located by certified mail at least thirty (30) days prior to the release of all or a portion of the bond.~~

~~f)~~ Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the Department within thirty (30) days after the last publication of the notice required by subsection 1800.40(a)(2). If written objections are filed and a hearing is requested, the Department shall inform all the interested parties of the time and place of the hearing and shall hold a public hearing within ~~thirty (30)~~ sixty (60) days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the Department in a newspaper of general circulation in the locality for two (2) consecutive weeks. The public hearing shall be held in the locality

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of the surface coal mining operation from which bond release is sought, at the location of the Department's office, or at the State capital, at the option of the objector. The hearing officer shall be an employee of the Department or a licensed attorney.

fg) For the purpose of the hearing under subsection ~~(f)~~ (e), the Department shall have the authority to administer oaths and affirmations, subpoena witnesses and written or printed materials, compel the attendance of witnesses or the production of these materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. All discovery shall be conducted in accordance with 62 Ill. Adm. Code 1843.21. A verbatim record of each public hearing shall be made, and a transcript shall be made available on request of any party or by order of the Department. Ex parte contacts between the parties, and their representatives, and the hearing officer, are prohibited.

gh) Within thirty (30) days after the close of the hearing record, the hearing officer shall issue and serve the Department, and by certified mail, the permittee and any objectors to bond release with written findings of fact, conclusions of law and an order adjudicating the application for bond release. Service of this final administrative action shall be deemed complete upon mailing.

hi) Judicial review. Following service of the final administrative decision of the Department under subsections (b)(2) and ~~(h)~~ (g), the permittee or any affected person may request judicial review of that decision in accordance with Article III of the Code of Civil Procedure (Ill. Rev. Stat. 1985~~7~~, ch. 110, pars. 3-101 through 3-112.)

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1800.60 Terms and Conditions for Liability Insurance

a) The Department shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in Illinois certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury and property damage shall be three hundred

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thousand dollars ($300,000) for each occurrence and five hundred thousand dollars ($500,000) aggregate.

b) The policy or approved replacement thereof shall be maintained in full force during the life of the permit or any renewal thereof, and ~~including~~ the liability period necessary to complete all reclamation operations under 62 Ill. Adm. Code 1800 - 1850.

c) The policy shall include a rider requiring that the insurer notify the Department whenever substantive changes are made in the policy including any termination or failure to renew.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: General

2) Code Citation: 62 Ill. Adm. Code 1700

3) Section Number: Proposed Action

1700.11 Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

The Illinois Department of Mines and Minerals ("Department") has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Mining Control and Reclamation Act of 1977. The following discussion describes the Department's proposed amendments to Part 1700 in response to these agency concerns:

Section 1700.11 sets forth the applicability of the Department's rules codified at 62 Ill. Adm. Code 1700-1850. The proposed amendments to Section 1700.11 limits the applicability of these rules to active surface coal mining operations, in conformance to 30 CFR 701.11.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers Proposed Action Illinois Register Citation

10) Statement of Statewide Policy Objectives:

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The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1700
GENERAL

Section
1700.11 Applicability
1700.12 Petitions to Initiate Rulemaking
1700.13 Notice of Citizen Suits
1700.14 Availability of Records
1700.15 Computation of Time
1700.16 Fees and Forfeitures
1700.17 Administration
1700.18 Advisory Council on Reclamation

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9347; amended at 11 Ill. Reg. 8051, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

NOTE: Bold face type denotes statutory language.

Section 1700.11 Applicability

a) These regulations apply to all coal exploration and surface coal mining ~~and reclamation~~ operations, except:

1) The extraction of coal by a landowner or lessee for the landowner's or lessee's own noncommercial use from land owned or leased by him or her where two hundred and fifty (250) tons or less of coal are removed in any twelve (12) consecutive months. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

2) **The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the total mineral tonnage mined.** (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.06(b));

3) Coal exploration on lands subject to the requirements of 43 CFR 3480-3487 (1986); and

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4) **The extraction of coal on Federal lands except to the extent provided under a cooperative agreement with the United States.** (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.06(d)).

b) The Illinois Department of Mines and Minerals (Department) shall, within sixty (60) days of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under subsection (a). The Department shall, within thirty (30) days of receipt of a request for exemption under subsection (a), publish notice of the request in a newspaper of general circulation in the area of the proposed exempted operation and send the request to interagency members. Prior to the time a determination is made, any person may submit , and the Department shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who has made a complete and accurate request for an exemption and relied upon the determination shall not be cited for violations which occurred prior to the date of the reversal.

c) The requirements of 62 Ill. Adm. Code 1800 through 1850 (the permanent program regulations) apply to all surface coal mining and reclamation operations for which the surface coal mining operation is required to obtain a permit under the State Act on and after February 1, 1983.

d)

1) Each structure used in connection with a coal exploration or surface coal mining and reclamation operations shall comply with the performance standards and the design requirements of the permanent program regulations except that:

A) The Department shall exempt an existing structure which meets the performance standards of the permanent program regulations but does not meet the design requirements of the permanent program regulations from meeting those design requirements. The Department shall grant this exemption as part of the permit application process after obtaining the information 62 Ill. Adm. Code 1780.12 or 1784.12 require and after the Department makes the findings required in 62 Ill. Adm. Code 1773.15(c)(6) and;

B) If a performance standard in 62 Ill. Adm. Code 280

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(interim program regulations) is at least as stringent as the comparable performance standard of the permanent program regulations, an existing structure which meets the performance standards of the interim program regulations shall be exempted by the Department from meeting the design requirements of the permanent program regulations. The Department shall grant this exemption as part of the permit application process after obtaining the information 62 Ill. Adm. Code 1780.12 or 1784.12 require and after the Department makes the findings required in 62 Ill. Adm. Code 1773.15(c)(6).

2) The exemptions provided in subsections (d)(1)(A) and (d)(1)(B) shall not apply to:

A) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and

B) The requirements to restore the approximate original contour of the land.

3) The permittee shall modify or reconstruct an existing structure which meets a performance standard of the interim program regulations which is incompatible with the permanent program regulations to meet the design standard of the permanent program regulations, pursuant to 62 Ill. Adm. Code 1773.15(c)(6), 1780.12 and 1784.12.

4) The permittee shall modify or reconstruct an existing structure which does not meet the performance standards of the interim program regulations and which the applicant proposes to use in connection with a coal exploration or surface coal mining and reclamation operation to meet the design standards of the permanent program regulations prior to issuance of the permit.

e)

1) Any person conducting coal exploration on or after February 1, 1983, shall either file a notice of intention to explore or obtain approval of the Department, as required by 62 Ill. Adm. Code 1772.

2) Coal exploration performance standards in 62 Ill. Adm. Code 1815 apply after August 3, 1982.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: General Definitions

2) Code Citation: 62 Ill. Adm. Code 1701

3) Section Number: Proposed Action

1701.Appendix A Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On October 25, 1988, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) conditionally approved the Illinois Department of Mines and Minerals' (Department) amendments to its permanent regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). See 53 Fed. Reg. 43112 (October 25, 1988). OSMRE's approval of Illinois' amendments to its regulatory program was conditioned upon the submittal of new amendments designed to correct defects identified in Illinois' rules.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On January 4, 1989, OSMRE, by final rule, instructed the Department to submit a proposed amendment to the definition of "valid existing rights" found at 62 Ill. Adm. Code 1701. Appendix A. See 54 Fed. Reg. 118 (January 4, 1989).

The following discussion describes the Department's proposed amendments to Part 1701 in response to these OSMRE directives:

Section 1701.Appendix A sets forth the Department's general definitions for surface coal mining and reclamation operations and coal exploration operations. The proposed amendment of "previously mined area" in Section 1701.Appendix A serves to make the Department's requirements consistent with the definition in the OSMRE counterpart regulation, 30 CFR 701.5. The proposed amendment of "valid existing rights" in Section 1701.Appendix A serves to make the Department's requirements consistent with the definitions in the OSMRE counterpart regulation, 30 CFR 761.5.

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6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300,

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Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1701
GENERAL DEFINITIONS

Section
1701.5 Definitions
APPENDIX A Definitions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4932; amended at 11 Ill. Reg. 8075, effective July 1, 1987; amended at __ Ill. Reg.____, effective _____, 1990.

NOTE: Boldface type denotes statutory language.

Section 1701.Appendix A Definitions

As used in 62 Ill. Adm. Code 1700 - 1850, the following terms have the specified meanings, except when another meaning is given:

Acid drainage means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weather processes, form acids that may create acid drainage.

Act or Federal Act means the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. (30 U.S.C. 1201 et seq.).

Adjacent area means the area located outside the permit area, or shadow area, where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations.

Administratively complete application means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

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Affected area means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: any water or surface land upon which those activities are conducted or located.

Agricultural use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

Applicant means any person seeking a permit; permit revision; renewal; or transfer, assignment or sale from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

Application means the documents and other information filed with the Department under these regulations for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

Approximate original contour **means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, and spoil piles and coal refuse piles eliminated.** Permanent water impoundments may be permitted where the Department has determined that they comply with 62 Ill. Adm. Code 1816.49 and 1816.56, 1816.133 or 1817.49, 1817.56 and 1817.133. Section 1.03(a)(2) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.03(a)(2)).

Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for specific use.

Article means an article of the State Act.

Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the cliff or highwall and transporting the coal along an auger bit to the surface.

Best technology currently available means equipment, devices, systems, methods, or techniques which will

prevent, to the extent possible, additional contributions of

suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by 62 Ill. Adm. Code 1816.42; and

minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 62 Ill. Adm. Code 1816 and 1817.

Boxcut means the first open cut resulting in the placing of overburden on unmined land adjacent to the initial pit.

Cemetery means any area of land where human bodies are interred.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-84 found at pp. 247-252 in Vol 5.05 of the Annual Book of ASTM Standards published by the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

Coal exploration means the field gathering of:

surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 62 Ill. Adm. Code 1700 - 1850.

Coal mining operation means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the area upon which such activities occur.

Coal mine waste means coal processing waste and underground development waste.

Coal processing or coal preparation means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

Coal preparation plant means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

Coal processing waste means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

Combustible material means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for functions of community groups; used for an educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

Complete and accurate application means an application for permit approval or approval for coal exploration where required, which the Department determines contains all information which the State Act and 62 Ill. Adm. Code 1700 - 1850 require.

Consolidated material means materials of sufficient hardness or stability to resist weathering so as to inhibit erosion or sloughing.

Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

Cumulative impact area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

the proposed operation;

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all existing operations;

any operation for which a permit application has been submitted to the Department.

Darkened surface soil means mineral horizons formed at or adjacent to the surface of the soil which are higher in organic matter content, and visibly darker in color than the immediately underlying horizons.

Department means the Illinois Department of Mines and Minerals, or its successor.

Direct financial interest means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

Director means the Director of the Department.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 62 Ill. Adm. Code 1800 is released.

Diversion means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

Downslope means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Employee means

any person employed by the Department who performs any function or duty under the Act; and

advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Department under the authority of State law or regulations. However, members of advisory boards or commissions

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established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

Ephemeral stream means a stream which meets both requirements:

It flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and

It has a channel bottom that is always above the local water table.

Excess spoil means spoil material disposed of in a location other than the mined-out area; provided, the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 62 Ill. Adm. Code 1816.102(d) and 1817.102(d) in nonsteep slope areas shall not be considered excess spoil.

Existing structure means a structure used in connection with surface coal mining and reclamation operations for which construction began prior to June 1, 1982.

Federal Director means the Director of the Federal Office of Surface Mining Reclamation and Enforcement.

Final cut means the last pit created in a surface-mined area.

Fragile lands means geographic areas containing important natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 7.01 of the State Act (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7907.01) and 62 Ill. Adm. Code 1761.11, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

Fugitive dust means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation

operations; and other activities in which material is either removed, stored, transported, or redistributed.

Gravity discharge means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

Ground cover means the area of ground covered by the combined aboveground parts of vegetation and by the litter that is produced naturally on site.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Head-of-hollow fill means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

High capability land means land not meeting the definition of prime farmland or land exempted in accordance with 62 Ill. Adm. Code 1785.17 where the Department determines the following three facts are present together:

The land is capable of being reclaimed for row-crop agricultural purposes;

The land is suitable for row-crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining (all soil types in capability Classes I, II, III and those soil types in capability Class IV with slopes of five (5) percent or less), as set forth in Land-Capability Classification, Agriculture Handbook No. 210, published by the U.S. Department of Agriculture, Soil Conservation Service in 1973; and

the optimum future use of the land is for row-crop agricultural purposes.

Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

Highwall remnant means that portion of highwall that remains after backfilling and grading of a remining permit area.

Higher or better uses means post-mining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

Historically used for cropland means:

Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the lands for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations;

Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration that the permit area is clearly cropland but falls outside the specific five (5)-year-in-ten (10) criterion, in which case the regulations for prime farmland shall be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Historic lands means important historic, cultural, and scientific areas that could be be damaged or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground

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surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the State Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement. Section 1.03(a)(7) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.03(a)(7)).

Impounding structure means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid material.

Impoundment means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Indirect financial interest means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

In situ processes means activities conducted in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

Institute means the Department of Energy and Natural Resources or such other agency as designated by the Director in accordance with Section 7.03 of the State Act.

Interagency Committee means the Interagency Committee on Surface Mining Control and Reclamation Section 1.05 of the State Act created.

Intermittent stream means:

A stream or reach of a stream that drains a watershed of at least

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one (1) square mile; or

A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Irreparable damage to the environment means any damage to the environment in violation of the State Act or these regulations that cannot be corrected by actions of the applicant.

Land capability means the soils' premining capabilities based on the United States Department of Agriculture, Soil Conservation Service classification system as found in Agriculture Handbook No. 210, Land-Capability Classification, (published in 1973) as interpreted from the soils map for sustained production of commonly cultivated crops or for the production of permanent vegetation.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department in accordance with 62 Ill. Adm. Code 1780.23.

Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

Pastureland means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by the livestock or occasionally cut and cured for livestock feed.

Grazingland means land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

Forestry means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

Residential means land used for single- and multiple-family housing, mobile home parks, and other residential lodgings.

Industrial/Commercial means land used for:

Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of

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products. This includes all heavy and light manufacturing facilities.

Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

Recreation is land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

Fish and wildlife habitat is land dedicated wholly or partially to the production, protection, or management of fish or wildlife.

Developed water resources includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

Undeveloped land or no current use or land management includes land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Mining operations or surface coal mining operations **means both surface mining operations and underground mining operations.** Section 1.03(a)(11) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.03(a)(11)).

Moist bulk density means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at one hundred and five degrees (105° C).

MSHA means the Mine Safety and Health Administration of the United States Department of Labor.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

Noxious plants means any plant species listed as a "noxious weed" under

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regulations authorized by the Illinois Noxious Weed Law (Ill. Rev. Stat. 1985, ch. 5, pars. 591 et seq.); any plant species whose seed is listed as a "prohibited (primary) noxious weed" or "restricted" (secondary) noxious weed" or "weed seeds" under regulations authorized by the Illinois Seed Law (Ill. Rev. Stat. 1985, ch. 5, pars. 401 et seq.); or any plant which the Department of Agriculture has declared a pest under the Illinois Pesticide Act of 1979. (Ill. Rev. Stat. 1985, ch. 5, pars. 801. et seq.)

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Office means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Operator means any person engaged in coal mining who removes or intends to remove more than two hundred and fifty (250) tons of coal from the earth or from coal refuse piles by mining within twelve (12) consecutive calendar months in any one location.

Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perennial stream means a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows continuously as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

Performance bond means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 - 1850, and the requirements of the permit and reclamation plan.

Performing any function or duty under this Act means those decisions or actions, which if an employee performed or did not perform would affect the programs under the State Act.

Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Department and other appropriate State and Federal agencies.

Permanent impoundment means an impoundment which the Department approved and, if required, is approved by other State and Federal agencies for

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retention as part of the post-mining land use.

Permit means a permit to conduct surface coal mining and reclamation operations which the Department issues pursuant to the State program.

Permit area means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Department. This area shall include all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit indicated on the approved map which the operator submitted with the operator's application and which is required to be bonded under 62 Ill. Adm. Code 1800 and where the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided, that areas adequately bonded under another valid permit may be excluded from a permit area. The permit area excludes the area defined in these regulations as the shadow area.

Permit term means the period during which the permittee may engage in mining and reclamation operations under the permit. Section 1.03(a)(18) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.03(a)(18)).

Permittee means a person holding or required by the State Act or these regulations to hold a permit to conduct surface coal mining and reclamation operations issued by a Department pursuant to a State program.

Person means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, general partnership, limited partnership, business trust association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization or any agency, unit, or instrumentality of Federal, State or local government including any publicly-owned utility or publicly-owned corporation of Federal, State or local government.

Person having an interest which is or may be adversely affected or Person with a valid legal interest shall include any person:

Who uses any resources of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

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Placeland means undisturbed land before any mining activity.

Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

Previously mined area means land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of ~~62 Ill. Adm. Code 1700 - 1850~~ the Act.

Prime farmland means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (43 Fed. Reg. 4031 (1978)) and which have historically been used for cropland as that phrase is defined above.

Principal shareholder means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock.

Prohibited financial interest means any direct or indirect financial interest in any coal mining operation.

Property to be mined means both the surface and mineral estates within the permit area and the mineral estate within the shadow area.

Public building means any structure that is owned or leased and principally used by a public government agency for public business or meetings.

Public office means a facility under the control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

Public park means an area or portion of an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

Publicly-owned park means a public park that is owned by a Federal, State or local governmental entity.

Public road means a road

which has been designated as a public road pursuant to the law of the jurisdiction in which it is located;

which is maintained with public funds in a manner similar to other

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public roads of the same classification within the jurisdiction;

for which there is substantial (more than incidental) public use; and

which meets road construction standards for other public roads of the same classification in the local jurisdiction.

Qualified registered professional engineer means a civil engineer, mining engineer, environmental engineer or general engineer meeting the requirements of Section 9 of The Illinois Professional Engineering Act. (Ill. Rev. Stat. 1985, ch. 111, par. 5112).

Rangeland means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

Reasonably available spoil means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Reclamation means those actions which these regulations require to restore mined land to a post-mining land use which the Department has approved. These actions do not include subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability.

Recurrence interval means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten (10)-year, twenty-four (24)-hour precipitation event would be that twenty-four (24)-hour precipitation event expected to occur on the average once in ten (10) years.

Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by Department-approved crop production methods. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

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Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

Regional director means Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement or Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement's representative.

Regulatory program means Illinois' permanent regulatory program which the Office of Surface Mining Reclamation and Enforcement approved and set forth in 30 CFR 913.1-913.16 (1986). 30 CFR 913.1-913.16 do not include any subsequent amendments or editions.

Remining means conducting surface coal mining and reclamation operations which affect previously mined areas.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

Responsible land management means that combination of preparation, maintenance, fertilization and tilling of land capable of producing row crops which would be practiced by a person in the business of producing row crops on unmined land in the same region on the same, or similar, soil type as the mined land being managed, which practices can reasonably be expected to continue after mining and reclamation are completed, as determined by the Department.

Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces.

Secretary means the Secretary of the Interior or the Secretary's representative.

Sedimentation pond means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

Shadow area means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by the State Act that may be adversely impacted by underground mining operations including impacts of subsidence.

Significant forest cover means an area where the plant community consists predominantly of trees and other woody vegetation.

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Significant, imminent environmental harm to land, air or water resources means:

An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life;

An environmental harm is imminent if a condition, practice, or violation exists which:

Is causing such harm; or

May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 8.06(c) of the State Act. (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7908.06(c)).

An environmental harm is significant if that harm is appreciable and not immediately reparable.

Siltation structure means a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will meet applicable effluent standards.

Slope means average inclination of a surface measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

A horizon. The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from the underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

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B horizon. The layer that typically is immediately beneath the A and E horizons and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Soil survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 62 Ill. Adm. Code 1785.17(c)(1).

Spoil means overburden that has been removed during surface coal mining operations.

Stabilize means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

State Act means the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1985, ch. 96 1/2, pars. 7901.01 et seq.)

State regulatory program means the Illinois program which the Secretary approved on June 1, 1982 pursuant to 30 CFR 732.1 through 732.15.

Steep slope means any slope of more than twenty (20) degrees or such lesser slope as the Department may designate after consideration of such regional characteristics as soil and climate.

Substantially disturb means, for purposes of coal exploration, to impact significantly upon land, air or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to

mine it without an existing mine alone, as described in the above example, are not sufficient to constitute substantial legal and financial commitments.

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

Surface coal mining and reclamation operations, or mining and reclamation operations, means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Surface coal mining operations, or mining operations means:

Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine-site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds (16 2/3) per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Federal Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

The areas upon which the activities described in subsection (a) occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Surface mining operations means activities conducted on the surface of lands in connection with a surface coal mine or surface operations. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, coal recovery from coal waste disposal areas, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; and the areas on which such activities occur or where such activities disturb the natural land surface. Such areas include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. Section 1.03(a)(24) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.03(a)(24)).

Suspended solids or nonfilterable residue, expressed as milligrams per liter, means any materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

Temporary impoundment means an impoundment which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

Ton means two thousand (2000) pounds avoirdupois (.90718 metric ton).

Topsoil means the A and E soil horizon layers of the four (4) master soil horizons.

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Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to living organisms or uses of water.

Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill or injure, or impair living organisms commonly present in the area that might be exposed to it.

Transfer, assignment or sale of permit rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit which the Department issued.

Underground development waste means waste rock mixtures resulting from development of areas for underground mining activities.

Underground mining activities means a combination of:

Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

Underground mining operations means the underground excavation of coal; and

surface operations incident to the underground extraction of coal, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas on which are sited support facilities including hoist and ventilation ducts, areas used for the storage and disposal of waste, and areas on which materials incident to underground mining operations are placed; and

underground operations incident to underground excavation of coal, such as underground construction, operation, and reclamation of

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shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, or blasting. Section 1.03(a)(26) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.03(a)(26)).

Unwarranted failure to comply means the failure of a permittee to prevent the occurrence of any violation of the operator's permit or any requirement of the State Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the State due to indifference, lack of diligence, or lack of reasonable care. Section 1.03(a)(27) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7901.03(a)(27)).

Valid existing rights means:

Except for haul roads, that a person possesses valid existing rights for an area protected under Section 7.01 of the State Act (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7907.01) on August 3, 1977, if the application of any of the prohibitions contained in that Section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Section 15 of the Illinois Constitution of 1970 or both.

For haul roads

A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977,; or at the time of the designation of an area, as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of the coming into existence, within the prohibited distance, of a structure, road, cemetery, or other activity listed in Section 7.01 of the State Act, or

Any other road in existence as of August 3, 1977, or at the time of the designation of an area as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of coming into existence, within the prohibited distance of a structure, road, cemetery or other activity listed in Section 7.01 of the State Act.

~~A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination~~

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~~that coal is "needed for" will be be based upon a finding that the extension of mining is essential to make the surface coal mining operations as a whole economically viable.~~

Where an area comes under the protection of Section 7.01 of the State Act after August 3, 1977, valid existing right shall be found if:

On the date the protection comes into existence, a validly authorized surface coal mine operation exists on that area; or

The prohibition caused by Section 7.01 of the State Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Section 15 of Illinois Constitution of 1970 or both.

Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon Illinois case law concerning interpretation of documents conveying mineral rights or, where Illinois case law is lacking, upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

Valley fill means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than twenty (20) degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

Violation notice means any notification, by letter, memorandum, legal or administrative pleading, or other written communication, from a governmental entity, telling of a violation of law.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

Willful violation means a deliberate act or omission which violates the State Act, these regulations, or any permit condition which the State Act requires.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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NOTICE OF PROPOSED RULES

1) Heading of the Part: Individual Civil Penalties

2) Code Citation: 62 Ill. Adm. Code 1846

3) Section Number: Proposed Action

1846.1	New Section
1846.5	New Section
1846.12	New Section
1846.14	New Section
1846.17	New Section
1846.18	New Section

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On December 16, 1988, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17. The following discussion describes the Department's new Part 1846 proposed in response to this OSMRE directive:

Proposed new Section 1846.1 outlines the scope of proposed Part 1846, individual civil penalties. Section 1846.1 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 846.1.

Proposed new Section 1846.5 sets forth the definitions used in proposed Part 1846. Section 1846.5 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 846.5.

Proposed new Section 1846.12 outlines when the Department may assess an individual civil penalty. Section 1846.12 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 846.12.

Proposed new Section 1846.14 sets forth the Department's method for computing individual civil penalties. Section 1846.14 serves to make the Department's requirements consistent with OSMRE's counterpart

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regulation, 30 CFR 846.14.

Proposed new Section 1846.17 outlines the Department's procedures for assessing individual civil penalties. Section 1846.17 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 846.17.

Proposed new Section 1846.18 outlines the payment of individual civil penalties. Section 1846.18 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 846.18.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2

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x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Rules begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1846
INDIVIDUAL CIVIL PENALTIES

Section
1846.1 Scope.
1846.5 Definitions.
1846.12 When an individual civil penalty may be assessed.
1846.14 Amount of individual civil penalty.
1846.17 Procedure for assessment of individual civil penalty.
1846.18 Payment of penalty.

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at __Ill. Reg. _____, effective _____, 1990.

Section 1846.1 Scope.

This Part covers the Illinois Department of Mines and Minerals' (Department) assessment of individual civil penalties under Section 8.04(f) of the Surface Coal Mining Land Conservation and Reclamation Act (State Act). Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7908.04(f).

Section 1846.5 Definitions.

For purposes of this Part:

Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

Violation, failure or refusal means —

1) A violation of a condition of a permit issued pursuant to Section 2.01 of the State Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par 7902.01); or

2) A failure or refusal to comply with any order issued under Section 8.06 of the State Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7908.06), or any order incorporated in a final decision issued by the Department under the State Act, except an order incorporated in a decision issued under Section 8.06(b) of the State Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7908.06(b)).

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Willfully means that an individual acted —

1) Either intentionally, voluntarily or consciously, and

2) With intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

Section 1846.12 When an individual civil penalty may be assessed.

a) Except as provided in subsection (b), the Department may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

b) The Department shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Department to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

Section 1846.14 Amount of individual civil penalty.

a) In determining the amount of an individual civil penalty assessed under Section 1846.12, the Department shall consider the criteria specified in Section 8.04(a) of the State Act (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7908.04 (a)) including:

1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

b) The penalty shall not exceed $5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Department may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or

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other order incorporated in a final decision issued by the Department, until abatement or compliance is achieved.

Section 1846.17 Procedure for assessment of individual civil penalty.

a) Notice. The Department shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final administrative decision of the Department 30 days after service upon the individual unless:

1) The individual files, within 30 days of service of the notice of proposed individual civil penalty assessment, a petition for review with the Illinois Department of Mines and Minerals, Land Reclamation Division, 300 West Jefferson Street, Suite 300, P.O. Box 10197, Springfield, Illinois 62791-0197, in accordance with 62 Ill. Adm. Code 1843.16; or

2) The Department and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

c) Service. For purposes of Section 1846.17, service is sufficient if it would satisfy the requirements of 62 Ill. Adm. Code 1843.14.

Section 1846.18 Payment of penalty.

a) No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final administrative decision in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the Department's decision.

b) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with Section 1843.16, the penalty shall be due upon issuance of a final administrative decision affirming, increasing or decreasing the proposed penalty.

c) Abatement agreement. Where the Department and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual

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named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final administrative decision from the Department stating that the penalty is due on the date of such final administrative decision, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

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1) Heading of the Part: Permanent Program Performance Standards--Surface Mining Activities

2) Code Citation: 62 Ill. Adm. Code 1816

3)

Section Number:	Proposed Action
1816.49	Amended
1816.61	Amended
1816.64	Amended
1816.67	Amended
1816.68	Amended
1816.83	Amended
1816.97	Amended
1816.99	Amended
1816.102	Amended

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On October 25, 1988, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) conditionally approved the Illinois Department of Mines and Minerals' (Department) amendments to its permanent regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). See 53 Fed. Reg. 43112 (October 25, 1988). OSMRE's approval of Illinois' amendments to its regulatory program was conditioned upon the submittal of new amendments designed to correct defects identified in Illinois' rules.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under SMCRA and under Section 4.02 of the Illinois Administrative Procedure Act (IAPA). Ill. Rev. Stat. 1987, ch. 127, par. 1004.02.

The following discussion describes the Department's proposed amendments to Part 1816 in response to these OSMRE directives and agency concerns:

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Section 1816.49 sets forth the Department's performance standards for temporary and permanent impoundments constructed to facilitate surface coal mining operations. The proposed amendments to subsection (a)(9) define a level of experience for professionals charged with inspecting impoundments, in accordance with Section 4.02 of the IAPA, specify the timing of impoundment inspections and clarify the location of impoundment inspection reports. The proposed amendments to subsection (a)(10) set forth exemptions from quarterly impoundment examinations for certain classes of impoundments if the operator can make the requisite showing. These amendments will make the impoundment inspection and examination requirements more suitable to the mining conditions existing in Illinois. Given Illinois' flat topography and the lack of any impoundment failures, the frequency and detail of the Department's proposed inspection and examination rules will provide the same amount of protection to the public and the environment as the current regulations while being less burdensome to Illinois operators.

The proposed amendments to subsections (b)(9) and (c) address an OSMRE program conditon set forth in the October 25, 1988 approval of the Department's amended regulations. The proposed amendments to subsections (b) and (c) clarify the spillway requirements for both permanent and temporary impoundments meeting the criteria of the Mine Safety and Health Administration (MSHA) set forth in 30 CFR 77.216(a). Proposed new subsection (b)(9) also changes the spillway sizing criteria for non-MSHA permanent impoundments from a fifty (50) year to a twenty-five (25) year, six (6) hour precipitation event. These proposed amendments bring Illinois' rules into conformance with OSMRE's counterpart impoundment regulation, 30 CFR 816.49.

Section 1816.61 lists the general requirements for blasting operations associated with surface coal mining operations. Proposed new subsection (c) specifically limits the Department's requirements set forth in 62 Ill. Adm. Code 1780.13, 1816.62 through 1816.66(b) and 1816.68 to blasts using more than twenty-five (25) pounds of explosives. This rule change will allow the operator to use small amounts of explosives without the burden of complying with the scheduling, warning sign, pre-blasting survey and blasting operations records requirements set forth in these rules. However, the operator will still be required to comply with air blast, ground vibration, and flyrock limits and be required to use a certified blaster and submit blast designs for blasting within 1,000 feet of structures or within 500 feet of underground mines. Current subsection (c) would be redesignated as subsection (d).

Section 1816.64 sets forth the Department's requirements for publishing, distributing and compliance with blasting schedules. The proposed amendments to subsection (c)(1) serve to make the

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Department's requirements consistent with the proposed amendments to Section 1816.61(c).

Section 1816.67 sets forth the Department's requirements for limiting and monitoring the off-site adverse effects of blasting operations; i.e., ground vibration, air blast and flyrock. The proposed amendment to subsection (c)(1) changes the cube root scaled distance from 500 to 350. A cube root scaled distance of 350 will provide adequate results from a regulatory stand point while reducing the burden to operators.

Section 1816.68 sets forth the Department's requirements for compiling and maintaining records, including seismograms and air blast recordings where required, of each production blast fired at the mine in the permit area. The Department proposes to delete the requirement to record wind velocity and direction given that these factors do not change air blast limits.

Section 1816.83 sets forth the Department's requirements regarding coal mine waste refuse piles. The proposed amendment to subsection (a)(3) corrects a typographical error in a regulation citation contained in this rule.

Section 1816.97 sets forth the Department's requirements concerning the protection of fish, wildlife, and related environmental values. The proposed amendments to subsections (b) and (e)(4) make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 816.97.

Section 1816.99 sets forth the Department's requirements concerning slides and other damage. The proposed amendments to subsection (c) enhance clarity by specifying that the Department's lateral support requirements apply to any mine-related excavations.

Section 1816.102 sets forth the Department's general requirements regarding backfilling and grading. The proposed amendment to subsection (a)(2) corrects a typographical error in a regulation citation contained in this rule.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_ No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

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No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next p

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1816
PERMANENT PROGRAM PERFORMANCE STANDARDS - SURFACE MINING ACTIVITIES

Section
1816.11 Signs and Markers
1816.13 Casing and Sealing of Drilled Holes: General Requirements
1816.14 Casing and Sealing of Drilled Holes: Temporary
1816.15 Casing and Sealing of Drilled Holes: Permanent
1816.21 Topsoil: General Requirements (Repealed)
1816.22 Topsoil and Subsoil
1816.23 Topsoil: Storage (Repealed)
1816.24 Topsoil: Redistribution (Repealed)
1816.25 Topsoil: Nutrients and Soil Amendments (Repealed)
1816.41 Hydrologic Balance Protection
1816.42 Hydrologic Balance: Water Quality Standards and Effluent Limitations
1816.43 Diversions
1816.44 Hydrologic Balance: Stream Channel Diversions (Repealed)
1816.45 Hydrologic Balance: Sediment Control Measures
1816.46 Hydrologic Balance: Siltation Structures
1816.47 Hydrologic Balance: Discharge of Structures
1816.48 Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil (Repealed)
1816.49 Impoundments
1816.50 Hydrologic Balance: Ground Water Protection (Repealed)
1816.51 Hydrologic Balance: Protection of Ground Water Recharge Capacity (Repealed)
1816.52 Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1816.53 Hydrologic Balance: Transfer of Wells (Repealed)
1816.54 Hydrologic Balance: Water Rights and Replacement (Repealed)
1816.55 Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1816.56 Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
1816.57 Hydrologic Balance: Stream Buffer Zones
1816.59 Coal Recovery
1816.61 Use of Explosives: General Requirements
1816.62 Use of Explosives: Pre-Blasting Survey
1816.64 Use of Explosives: Public Notice of Blasting Schedule
1816.65 Use of Explosives: Surface Blasting Requirements (Repealed)
1816.66 Use of Explosives: Blasting Signs, Warnings, and Access Control
1816.67 Use of Explosives: Control of Adverse Effects
1816.68 Use of Explosives: Records of Blasting Operations
1816.71 Disposal of Excess Spoil: General Requirements
1816.72 Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills
1816.73 Disposal of Excess Spoil: Head-of-Hollow Fills (Repealed)
1816.74 Disposal of Excess Spoil: Durable Rock Fills

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1816.75 Disposal of Excess Spoil: Preexisting Benches
1816.79 Protection of Underground Mining
1816.81 Coal Mine Waste: General Requirements
1816.82 Coal Processing Waste Banks: Site Inspection (Repealed)
1816.83 Coal Mine Waste: Refuse Piles
1816.84 Coal Mine Waste: Impounding Structures
1816.85 Coal Processing Waste Banks: Construction Requirements (Repealed)
1816.86 Coal Processing Waste: Burning (Repealed)
1816.87 Coal Mine Waste: Burned Waste Utilization
1816.88 Coal Processing Waste: Return to Underground Workings (Repealed)
1816.89 Disposal of Noncoal Mine Wastes
1816.91 Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
1816.92 Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
1816.93 Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
1816.94 Coal Processing Waste: Time and Requirements for Completion of Covering (Repealed)
1816.95 Stabilization of Surface Areas
1816.97 Protection of Fish, Wildlife, and Related Environmental Values
1816.99 Slides and Other Damage
1816.100 Contemporaneous Reclamation
1816.101 Backfilling and Grading: General Requirements
1816.102 Backfilling and Grading: General Grading Requirements
1816.103 Backfilling and Grading: Covering or Treating Coal and Acid- and Toxic-Forming Materials (Repealed)
1816.104 Backfilling and Grading: Thin Overburden
1816.105 Backfilling and Grading: Thick Overburden
1816.106 Backfilling and Grading: Previously Mined Areas
1816.107 Backfilling and Grading: Steep Slopes
1816.111 Revegetation: General Requirements
1816.112 Revegetation: Use of Introduced Species (Repealed)
1816.113 Revegetation: Timing
1816.114 Revegetation: Mulching and Other Soil Stabilizing Practices
1816.115 Revegetation: Grazing (Repealed)
1816.116 Revegetation: Standards for Success
1816.117 Revegetation: Tree and Shrub Stocking for Forest Land
1816.131 Cessation of Operations: Temporary
1816.132 Cessation of Operations: Permanent
1816.133 Post-Mining Land Capability
1816.150 Roads
1816.180 Utility Installations
1816.181 Support Facilities
1816.190 Affected Acreage Map

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2,

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pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1980; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8224; amended at 9 Ill. Reg. 13310, effective October 10, 1985; amended at 10 Ill. Reg. 8985, effective July 1, 1986; amended at 11 Ill. Reg. 8131, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1816.49 Impoundments

a) The requirements of this subsection apply to both temporary and permanent impoundments.

1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this Section. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1780. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.

2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1780.25(a) as designed to meet the requirements of this Part using current, prudent engineering practices. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

3) Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

4) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

5) Foundations.

A) Foundations and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.

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B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

7) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

8) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).

9) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.

A) ~~Inspections shall be made regularly during construction, upon completion of construction and at least yearly until removal of the structure or release of the performance bond.~~ Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.

B) All other impoundments shall be inspected at least quarterly during construction and upon completion of construction. The qualified registered professional engineer shall submit to the Department promptly, within thirty (30) days after each inspection, ~~provide to the Department~~ a sealed report that the impoundment has been constructed as designed ~~and maintained as designed~~ and in accordance with the approved plan and these regulations. ~~The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity,~~ any existing or required

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~~monitoring procedures and instrumentation, and any other aspects of the structure affecting stability~~.

C) A copy of the reports required in subsections (a) (9) (A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.

10) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) ~~shall be examined in accordance with 30 CFR 77.216, Other impoundments~~ shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or ~~and~~ other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, and any other aspects of the structure affecting stability. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed examination report shall be submitted to the Department within 30 days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection:

A) Impoundments that are completely incised;

B) Water impounding structures that impound water to an elevation less than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre/feet; and

C) Impoundments that do not facilitate mining or reclamation.

11) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately.

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The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

1) The size and configuration of the impoundment is adequate for its intended purposes.

2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1816.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section 1816.42.

3) The water level will be sufficiently stable and be capable of supporting the intended use.

4) Final grading will provide for adequate safety and access for proposed water users.

5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

6) The impoundment will be suitable for the approved post-mining land use.

7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

A) Runoff from above the slope shall be diverted to erosion free outlets.

B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period.

8) Embankment ponds, those having embankment heights of three (3) feet or greater above natural ground elevation, shall have outslopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less.

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9) Permanent impoundments ~~not meeting the size or other qualifying criteria of 30 CFR 77.216(a)~~ shall be provided with a spillway that will safely discharge a ~~fifty (50)~~ twenty-five (25) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors, such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of Section 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

c) Temporary impoundments.

Temporary impoundments ~~not meeting the size or other qualifying criteria of 30 CFR 77.216(a)~~ shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event or such larger event as may be required by the Department based on factors, such as terrain, topography and soil type. Temporary impoundments meeting the size or other criteria of Section 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.61 Use of Explosives: General Requirements

a) Each person who conducts surface mining activities shall comply with all applicable State and Federal laws in the use of explosives.

b) All blasting operations shall be conducted by persons certified by the Department in accordance with 62 Ill. Adm. Code 1850.

c) 62 Ill. Adm. Code 1780.13, 1816.62 through 1816.66(b) and 1816.68 apply only to blasting operations that consist of blasts that use more than 25 pounds of explosives or blasting agents.

ed) Blast design.

1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

A) One thousand (1,000) feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

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B) Five hundred (500) feet of an active or abandoned underground mine.

2) The blast design may be presented as part of the permit application or at a time, before the blast, approved by the Department.

3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable air blast, flyrock, and ground vibration standards in Section 1816.67.

4) The blast design shall be prepared and signed by a certified blaster.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.64 Use of Explosives: Public Notice of Blasting Schedule

a) All blasting shall be conducted from sunrise to sunset, and at times announced in the blasting schedule. The Department shall limit the area covered, timing and sequence of blasting, as listed in the schedule, if such limitations are necessary and reasonable in order to protect public health, safety or welfare.

b) Unscheduled blasting may be conducted only where public or operator health and safety so require. When an operator conducts an unscheduled blast, the operator, using audible warning signals, shall notify residents within one-half (1/2) mile of the blasting site and document the reason(s) for the unscheduled blast in accordance subsection 1816.68(a)(17).

c) Blasting schedule publication.

1) Each person who conducts surface mining activities shall publish a blasting schedule at least thirty (30) days, but not more than sixty (60) days, before beginning a blasting program ~~in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated~~. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

2) Copies of the schedule shall be distributed by mail to local governments and public utilities and mailed or delivered to each residence within one-half (1/2) mile of the proposed

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blasting area and to every other person within or outside such area to whom the Department requires to be mailed, and daily notices shall be provided to such persons prior to any blasting.

3) The person who conducts the surface mining activities shall republish and redistribute the schedule by mail at least every twelve (12) months and revise and republish the schedule at least thirty (30) days but not more than sixty (60) days before blasting in areas not covered in the current schedule or if the actual blasting times differ from the time periods listed in the current schedule for more than twenty percent (20%) of the blasts fired.

d) Blasting schedule contents.

1) A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

2) The blasting schedule shall contain at a minimum:

A) Identification of the specific areas in which blasting will take place;

B) Dates and time periods when explosives are to detonated;

C) Methods to be used to control access to the blasting area;

D) Types of audible warnings and all-clear signals to be used before and after blasting, and

E) Name, address, and telephone number of operator.

e) Public notice of changes in blasting schedules.

Before blasting in areas or at times not in a previous schedule, the person who conducts the surface mining activities shall prepare a revised schedule according to the procedures in subsections (c) and (d).

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.67 Use of Explosives: Control of Adverse Effects

a) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts

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on any underground mine, and change in the course, channel or availability of ground or surface water outside the permit area.

b)

1) Air blast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the person who conducts the surface mining activities and is not leased to any other person. If a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the air blast limitations of this subsection. The waiver shall be submitted to the Department before beginning blasting.

Lower frequency limit of measuring system, Hz ±3dB	Maximum level in dB
0.1 Hz or lower—flat response[1]	134 peak
2.0 Hz or lower—flat response	133 peak
6.0 Hz or lower—flat response	129 peak

[1] Only when approved by the Department

2) The measuring systems used shall have a flat frequency response of at least two hundred (200) Hz at the upper end.

3) The person who conducts blasting may satisfy the provisions of subsection (b) by meeting any of the three (3) specifications in the chart in subsection (b)(1).

4) If necessary to prevent damages specified in subsection (a), the Department shall specify lower maximum allowable airblast levels than those in subsection (b)(1) for use in the vicinity of a specific blasting operation.

c)

1) When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than ~~500~~ 350 and when:

A) The burden to hole depth ratio is greater than 1.0, or

B) The top stemming height is less than seventy percent (70%) of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (h) and Section 1816.68(b). This subsection shall not apply to horizontal blast holes

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drilled from the floor of the pit.

2) Cube root scaled distance equals the distance, in feet, from the blast to a specified location divided by the cube root of the maximum weight of explosives, in pounds, to be detonated in any eight (8) millisecond period.

3) To ensure compliance with the limits contained in this Section, the Department may require an air blast measurement of any or all blasts, and may specify the location of such measurements.

d) Flyrock, including blasted material traveling in the air, or along the ground, shall not be cast beyond the permit boundaries or beyond the area of regulated access required under Section 1816.66(c), or more than one-half the distance to the nearest dwelling or other occupied structure.

e) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle velocity shall not exceed one (1) inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. At distances greater than five thousand (5,000) feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall not exceed 0.75 inch per second at the locations of the structures described in this subsection. At distances less than three hundred (300) feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall not exceed 1.25 inch per second at the locations of the structures described in this subsection. These limits shall apply seperately to each component of motion as defined in Section 1816.67(h). The Department shall reduce peak particle velocity limits if determined necessary to provide damage protection, if so recommended in any pre-blast survey or condition survey report provided pursuant to Section 1816.62.

f) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground, or surface water outside the permit area, then the maximum peak particle velocity limitation of subsection (d) shall not apply at the following location:

1) At structures owned by the person conducting the mining activity, and not leased to another party; and

2) At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Department prior to blasting.

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g) When the scaled distance, as defined below, has a value less than sixty (60) at the nearest dwelling, public building, school, church, or commercial or institutional structure, a seismograph recording shall be made at or near the closest structure requiring protection.

1) Scaled Distance = The distance, in feet, from the blast to a specified location divided by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight (8) millisecond period.

2) To ensure compliance with the limits contained in this Section, the Department may require a seismograph recording of any or all blasts and may specify the location at which such recordings are made.

h) As used herein, seismograph recording or record or air blast recording or record shall mean:

A visually inspectable cartesian representation of the time history of the particle velocity levels or air blast levels versus time. Time is represented on the "X" axis. The particle velocity is shown by three traces representing mutually perpendicular components of motion. The components are oriented vertically, transversely, and longitudinally to the horizontal direction from the recording location to the location of the blast. The air blast time history is represented by a single trace. The record or recording includes either an analog representation of, or a written description of the vertical scale for the particle velocity traces and the air blast trace. The units for the particle velocity traces and scale are in inches per second. The units for the air blast trace and scale are millibars, pounds per square inch, or decibels. The recording also includes an analog or descriptive time scale. The time units are in seconds.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.68 Use of Explosives: Records of Blasting Operations

a) A record of each blast, including seismograph reports, shall be retained by the operator for at least three (3) years and shall be available for inspection by the Department and the public on request. The record is to be completed by the end of the work day following the day in which the blast occurred, including the seismograph meter reading, if available, and shall contain the following data:

1) Name of the operator conducting the blast;

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2) Location, date, and time of blast;

3) Name, signature, and certification number of the blaster conducting the blast;

4) The name of the owner or resident of, and the direction and distance, in feet, to the nearest dwelling, school, church, or commercial, or institutional building either:

A) Not located in the permit area; or

B) Not owned by the person who conducts the surface mining activities.

5) Type of material blasted;

6) Number of holes, burden, and spacing;

7) Diameter and depth of holes;

8) Types of explosives used;

9) Total weight of explosives used;

10) Weight of explosives used per hole;

11) Maximum weight of explosives detonated within any eight (8) millisecond period;

12) Maximum number of holes or decks detonated within any eight (8) millisecond period;

13) Initiation system;

14) Type and length of stemming;

15) Type of delay detonator and delay periods used;

16) Sketch of the delay pattern, including decking;

17) Reasons and conditions for each unscheduled blast~~;~~ ~~and~~.

~~18) Wind velocity and direction.~~

b) Air blast and/or ground vibration recordings, or photographic copies thereof, where required, shall be kept at the mine site office for a period of three (3) years following the date of the blast, and shall be available for inspection by the Department and the public on

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request. The recordings shall include the following:

1) Maximum air blast and/or ground vibration levels recorded;

2) The exact location of the monitoring equipment, and its distance from the blast, and the date and time of the recording;

3) Name of the person and firm making the recording;

4) Name of the person and firm analyzing the recording. The recording shall be signed and dated by the person performing the analysis; and

5) The type of instrument, sensitivity, and calibration signal or certification of annual calibration. When the recordings required at Sections 1816.67(c) and 1816.67(g) are produced via digitized systems, the sampling rate of the digitizer, in samples per second, shall be stated.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.83 Coal Mine Waste: Refuse Piles

Refuse piles shall meet the requirements of Section 1816.81, the additional requirements of this Section, and the requirements of 30 CFR 77.214 and 77.215 (1986). 30 CFR 77.214 and 77.215 (1986) do not include any subsequent amendments or editions.

a) Drainage control.

1) If the disposal area contains springs, natural or man-made wate courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of Section 1816.43 to safely pass the runoff from a one hundred (100) year, six (6) hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

3) Underdrains shall comply with the requirements of Section

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1816.73~~(1)~~(1)(2).

b) Surface area stabilization. Slope protection shall be provided to minimize erosion at the site. All disturbed surfaces, including diversion channels that are not riprapped or otherwise protected from erosion, shall be revegetated upon completion of construction.

c) Placement.

1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 1816.22. If approved by the Department, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

2) The final configuration of the refuse pile shall be suitable for the approved post-mining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, erosion control, conservation of soil moisture, or facilitation of the approved post-mining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (fifty (50) percent).

3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the Department if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four (4) feet of the best available, nontoxic, and noncombustible material, in a manner that does not impede drainage from the underdrains. The Department may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of Section 1816.111 through 1816.117 will be met.

d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

1) Such inspections shall be made at least quarterly throughout

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construction and during critical construction periods. Critical construction periods shall include foundation preparation including the removal of all organic material and topsoil; placement of underdrains and protective filter systems; installation of final surface drainage systems; and the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated.

2) The qualified registered professional engineer shall provide a sealed report to the Department promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and 62 Ill. Adm. Code 1700 through 1850. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

3) The sealed report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be sealed separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

4) A copy of each inspection report shall be retained at or near the minesite.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.97 Protection of Fish, Wildlife, and Related Environmental Values

a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and shall achieve enhancement of such resources where practicable.

b) No surface mining activity shall be conducted which ~~will~~ is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the United States Department of the Interior (Secretary) or which ~~will~~ is likely to result in the

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destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act (16 U.S.C. 1531 et seq.). The operator shall immediately report to the Department any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

c) No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the Department any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and after consultation, shall identify whether, and under what conditions, the operator may proceed in order to ensure that the operation is not in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.).

d) Nothing in these regulations shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.), or the Bald Eagle Protection Act, as amended, (16 U.S.C. 668 et seq.).

e) Each operator shall, to the extent possible using the best technology currently available:

1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Department determines that such requirements are unnecessary, due to factors such as the absence of raptors;

2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law specified in 62 Ill. Adm. Code 1773.12; ~~and~~

3) Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Department determines that such requirements are unnecessary, due to factors such as the absence of large mammals~~.~~; and

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4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

f) The operator conducting surface mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife such as wetlands and riparian vegetation.

g) Where fish and wildlife habitat is to be a post-mining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

1) Their proven nutritional value for fish or wildlife.

2) Their use as cover for fish or wildlife.

3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

h) Where cropland is to be the post-mining land use, where appropriate for wildlife and crop management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

i) Where residential, public service, or industrial uses are to be the post-mining land use, and where consistent with the approved post-mining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.99 Slides and Other Damage

a) An undisturbed natural barrier or constructed outcrop shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Department as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

b) At any time a slide occurs which may have a potential adverse affect

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on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the Department by the fastest available means and comply with any remedial measures required by the Department.

c) Operators that remove and do not replace the lateral support within a three (3) month period shall not, unless mutually agreed upon by the operator and the adjacent property owner, approach property lines, established right-of-way lines of any public roads, streets or highways closer than a distance, measured horizontally from the property line or right-of-way, equal to ten (10) feet plus one and one-half (1 1/2) times the depth of the any excavation except where consolidated materials or materials of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing exists in the highwall excavation, the distance from the property line or any established right-of-way line shall not, unless mutually agreed, be closer than a distance equal to ten (10) feet plus one and one-half (1 1/2) times the depth from the natural ground surface to the top of the consolidated material or materials. When the operator desires to remove the lateral support and replace it within a three (3) month period, the operator shall submit to the Department a written request for said purpose, outlining how the lateral support shall be replaced within three (3) months. Said request shall be approved or denied by the Department in accordance with 62 Ill. Adm. Code 1774.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1816.102 Backfilling and Grading: General Grading Requirements

a) Disturbed areas shall be backfilled and graded to:

1) Achieve the approximate original contour, except as provided in subsection (h);

2) Eliminate all highwalls, spoil piles, and depressions, except as provided in subsection (h) (small depressions) and in subsection (h)(3)(A)(i)(C) (previously mined highwalls);

3) Achieve a post-mining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

4) Minimize erosion and water pollution both on and off the site in accordance with Sections 1816.42 and 1816.95; and

5) Support the approved post-mining land use.

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b) Spoil, except excess spoil disposed of in accordance with Sections 1816.71 through 1816.74, shall be returned to the mined-out area.

c) Spoil and waste materials shall be compacted to ensure stability or to prevent leaching of toxic materials.

d) Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

1) All vegetative and organic material shall be removed from the area.

2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with Section 1816.22.

3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this Section.

e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with Sections 1816.81 and 1816.83, except that a long-term static safety factor of 1.3 shall be achieved.

f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and groundwater in accordance with Section 1816.41, to prevent sustained combustion, and to be in compliance with the revegetation requirements of Section 1816.111(a) and the approved post-mining land use.

g) Cut-and-fill terraces may be allowed by the Department where:

1) Needed to conserve soil moisture to ensure revegetation, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved post-mining land use in accordance with Sections 1816.41, 1816.95 and 1816.111; or

2) Specialized grading, foundation conditions, or roads are required for the approved post-mining land use, in which case the final grading may include a terrace to ensure the safety, stability, and erosion control necessary to implement the post-mining land use plan.

h) Small depressions may be constructed if they are needed to minimize

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erosion, create and enhance wildlife habitat, or assist revegetation by retaining moisture, in accordance with Sections 1816.41, 1816.95, 1816.97 and 1816.111.

i) Permanent impoundments may be approved if they meet the requirements of Sections 1816.49 and 1816.56 .

j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion in accordance with Section 1816.45 and provides a surface for replacement of topsoil that will minimize slippage such as discing and scarification.

k) The post-mining slope may vary from the approximate original contour when:

1) The standards for thin overburden in Section 1816.104 are met;

2) The standards for thick overburden in Section 1816.105 are met; or

3) Approval is obtained from the Department for:

A) Mountaintop removal operations in accordance with 62 Ill. Adm. Code 1785.14;

B) A variance from approximate original contour requirements in accordance with 62 Ill. Adm. Code 1785.16; or

C) Incomplete elimination of highwalls in previously mined areas in accordance with Section 1816.106.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: Permanent Program Performance Standards--Underground Mining Operations

2) Code Citation: 62 Ill. Adm. Code 1817

3)

Section Number:	Proposed Action
1817.49	Amended
1817.61	Amended
1817.64	Amended
1817.66	Amended
1817.67	Amended
1817.68	Amended
1817.97	Amended
1817.83	Amended
1817.122	Amended

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On October 25, 1988, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) conditionally approved the Illinois Department of Mines and Minerals' (Department) amendments to its permanent regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). See 53 Fed. Reg. 43112 (October 25, 1988). OSMRE's approval of Illinois' amendments to its regulatory program was conditioned upon the submittal of new amendments designed to correct defects identified in Illinois' rules.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under SMCRA and under Section 4.02 of the Illinois Administrative Procedure Act (IAPA). Ill. Rev. Stat. 1987, ch. 127, par. 1004.02.

The following discussion describes the Department's proposed amendments to Part 1817 in response to these OSMRE directives and agency concerns:

Section 1817.49 sets forth the Department's performance standards for

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temporary and permanent impoundments constructed to facilitate underground coal mining operations. The proposed amendments to subsection (a)(9) define a level of experience for professionals charged with inspecting impoundments, in accordance with Section 4.02 of the IAPA, specify the timing of impoundment inspections and serve to clarify the location of impoundment inspection reports. The proposed amendments to subsection (a)(10) set forth exemptions from quarterly impoundment examinations for certain classes of impoundments if the operator can make the requisite showing. These amendments will make the impoundment inspection and examination requirements more suitable to the mining conditions existing in Illinois. Given Illinois' flat topography and the lack of any impoundment failures, the frequency and detail of the Department's proposed inspection and examination rules will provide the same amount of protection to the public and the environment as the current regulations while being less burdensome to Illinois operators.

The proposed amendments to subsections (b)(9) and (c) address an OSMRE program condition set forth in the October 25, 1988 approval of the Department's amended regulations. The proposed amendments to subsections (b) and (c) clarify the spillway requirements for both permanent and temporary impoundments meeting the criteria of the Mine Safety and Health Administration (MSHA) set forth in 30 CFR 77.216(a). Proposed new subsection (b)(9) also changes the spillway sizing criteria for non-MSHA permanent impoundments from a fifty (50) year to a twenty-five (25) year, six (6) hour precipitation event. These proposed amendments bring Illinois' rules into conformance with OSMRE's counterpart impoundment regulation, 30 CFR 817.49.

Section 1817.61 lists the general requirements for blasting operations associated with underground coal mining operations. Proposed new subsection (d) specifically limits the Department's requirements set forth in 62 Ill. Adm. Code 1817.62 through 1817.66(b) and 1816.68 to blasts using more than twenty-five (25) pounds of explosives. This rule change will allow the operator to use small amounts of explosives without the burden of complying with the scheduling, warning sign, pre-blasting survey and blasting operations records requirements set forth in these rules. However, the operator will still be required to comply with air blast, ground vibration, and flyrock limits and be required to use a certified blaster and submit blast designs for blasting within 1,000 feet of structures or within 500 feet of underground mines. Current subsection (d) would be redesignated as subsection (e).

Section 1817.64 sets forth the Department's general performance standards for blasting associated with underground coal mining operations. The Departments's rules do not require the submission of blasting plans for underground coal mining permits. Thus, by adding the words "and the Department" to Section 1817.64(a), the Department ensures that it will receive notice of the proposed times and locations of blasting operations

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associated with underground coal mining operations.

Section 1817.66 sets forth the Departments requirements for blasting signs, audible blast warnings and all clear signals, and control of access to possible flyrock areas. Underground mine operators are not required to identify specific areas where blasting will take place. Thus, by using the word "site" instead of the word "area" in subsections (a) and (c), the operator will be required to place signs in the vicinity of the location that blasting will occur.

Section 1817.67 sets forth the Department's requirements for limiting and monitoring the off-site adverse effects of blasting operations; i.e., ground vibration, air blast and flyrock. The proposed amendment to subsection (c)(1) changes the cube root scaled distance from 500 to 350. A cube root scaled distance of 350 will provide adequate results from a regulatory stand point while reducing the burden to operators.

Section 1817.68 sets forth the Department's requirements for compiling and maintaining records, including seismograms and air blast recordings where required, of each production blast fired at the mine in the permit area. The Department proposes to delete the requirement to record wind velocity and direction given that these factors do not change air blast limits.

Section 1817.83 sets forth the Department's requirements regarding coal mine waste refuse piles. The proposed amendment to subsection (a)(3) corrects a typographical error in a regulation citation contained in this rule.

Section 1817.97 sets forth the Department's requirements concerning the protection of fish, wildlife, and related environmental values. The proposed amendments to subsections (b) and (e)(4) make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 817.97.

Section 1817.122 sets forth the Department's requirements regarding notification to all owners and occupants of surface property and structures above underground mine workings. The proposed amendments to Section 1817.122 specifically require operators to maintain copies of all public notices mailed pursuant to Section 1817.122 and to make such copies available for inspection by authorized agents of the Department.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

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If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1817
PERMANENT PROGRAM PERFORMANCE STANDARDS—
UNDERGROUND MINING OPERATIONS

Section
1817.11 Signs and Markers
1817.13 Casing and Sealing of Exposed Underground Openings: General Requirements
1817.14 Casing and Sealing of Underground Openings: Temporary
1817.15 Casing and Sealing of Underground Openings: Permanent
1817.21 Topsoil: General Requirements (Repealed)
1817.22 Topsoil and Subsoil
1817.23 Topsoil: Storage (Repealed)
1817.24 Topsoil: Redistribution (Repealed)
1817.25 Topsoil: Nutrients and Soil Amendments (Repealed)
1817.41 Hydrologic Balance Protection
1817.42 Hydrologic Balance: Water Quality Standards and Effluent Limitations
1817.43 Diversions
1817.44 Hydrologic Balance: Stream Channel Diversions (Repealed)
1817.45 Hydrologic Balance: Sediment Control Measures
1817.46 Hydrologic Balance: Siltation Structures
1817.47 Hydrologic Balance: Discharge Structures
1817.48 Hydrologic Balance: Acid-Forming and Toxic-Forming Materials (Repealed)
1817.49 Impoundments
1817.50 Hydrologic Balance: Underground Mine Entry and Access Discharges (Repealed)
1817.52 Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1817.53 Hydrologic Balance: Transfer of Wells (Repealed)
1817.55 Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1817.56 Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities
1817.57 Hydrologic Balance: Stream Buffer Zones
1817.59 Coal Recovery
1817.61 Use of Explosives: General Requirements
1817.62 Use of Explosives: Pre-Blasting Survey
1817.64 Use of Explosives: General Performance Standards
1817.65 Use of Explosives: Surface Blasting Requirements (Repealed)
1817.66 Use of Explosives: Blasting Signs, Warnings, and Access Control
1817.67 Use of Explosives: Control of Adverse Effects
1817.68 Use of Explosives: Records of Blasting Operations
1817.71 Disposal of Excess Spoil: General Requirements
1817.72 Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills
1817.73 Disposal of Underground Development Waste and Excess Spoil:

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Head-of-Hollow Fills (Repealed)
1817.74 Disposal of Excess Spoil: Durable Rock Fills
1817.75 Disposal of Excess Spoil: Preexisting Benches
1817.81 Coal Mine Waste: General Requirements
1817.82 Coal Processing Waste Banks: Site Inspection (Repealed)
1817.83 Coal Mine Waste: Refuse Piles
1817.84 Coal Mine Waste: Impounding Structures
1817.85 Coal Processing Waste Banks: Construction Requirements (Repealed)
1817.86 Coal Processing Waste: Burning (Repealed)
1817.87 Coal Mine Waste: Burning and Burned Waste Utilization
1817.88 Coal Processing Waste: Return to Underground Workings (Repealed)
1817.89 Disposal of Noncoal Mine Wastes
1817.91 Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
1817.92 Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
1817.93 Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
1817.94 Coal Processing Waste: Time Requirement for Completion of Covering (Repealed)
1817.95 Stabilization of Surface Areas
1817.97 Protection of Fish, Wildlife and Related Environmental Values
1817.99 Slides and Other Damage
1817.100 Contemporaneous Reclamation and Subsidence Control
1817.101 Backfilling and Grading: General Requirements
1817.102 Backfilling and Grading: General Grading Requirements
1817.103 Backfilling and Grading: Covering Coal and Acid- and Toxic-forming Materials (Repealed)
1817.106 Backfilling and Grading: Previously Mined Areas
1817.107 Backfilling and Grading: Steep Slopes
1817.111 Revegetation: General Requirements
1817.112 Revegetation: Use of Introduced Species (Repealed)
1817.113 Revegetation: Timing
1817.114 Revegetation: Mulching and Other Soil Stabilization Practices
1817.115 Revegetation: Grazing (Repealed)
1817.116 Revegetation: Standards for Success
1817.117 Revegetation: Tree and Shrub Stocking for Forest Land
1817.121 Subsidence Control
1817.122 Subsidence Control: Public Notice
1817.124 Subsidence Control: Surface Owner Protections (Repealed)
1817.126 Subsidence Control: Buffer Zones (Repealed)
1817.131 Cessation of Operations: Temporary
1817.132 Cessation of Operations: Permanent
1817.133 Post-Mining Land Capability
1817.150 Roads
1817.180 Utility Installations
1817.181 Support Facilities
1817.182 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area
1817.190 Affected Acreage Map

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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8230; amended at 9 Ill. Reg. 13315, effective October 10, 1985; amended at 10 Ill. Reg. 9606, effective July 1, 1986; amended at 11 Ill. Reg. 8250, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1817.49 Impoundments

a) The requirements of this subsection apply to both temporary and permanent impoundments.

1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this Section. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application, insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1784. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.

2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1784.16(a) as designed to meet the requirements of this Part using current, prudent engineering practices. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

3) Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

4) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden decreases in storage volume.

5) Foundations.

A) Foundations and abutments for the impounding structure shall be designed to be stable under all conditions of

construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.

B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

7) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

8) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).

9) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.

A) ~~Inspections shall be made regularly during construction, upon completion of construction and at least yearly until removal of the structure or release of the performance bond.~~ Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.

B) All other impoundments shall be inspected at least quarterly during construction and upon completion of construction. The qualified registered professional engineer shall submit to the Department ~~promptly~~, within thirty (30) days after each inspection, ~~provide to the Department~~ a sealed report that the impoundment has been constructed as designed ~~and maintained as designed~~ and in

accordance with the approved plan and these regulations. ~~The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.~~

C) A copy of the reports required in subsections (a) (9) (A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.

10) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) ~~shall be examined in accordance with 30 CFR 77.216. Other impoundments~~ shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or ~~and~~ other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, and any other aspects of the structure affecting stability. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed examination report shall be submitted to the Department within 30 days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection:

A) Impoundments that are completely incised;

B) Water impounding structures that impound water to an elevation less than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre/feet; and

C) Impoundments that do not facilitate mining or reclamation.

11) If any examination or inspection discloses that a potential

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hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

1) The size and configuration of the impoundment is adequate for its intended purposes;

2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1817.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section 1817.42;

3) The water level will be sufficiently stable and be capable of supporting the intended use;

4) Final grading will provide for adequate safety and access for proposed water users;

5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

6) The impoundment will be suitable for the approved post-mining land use;

7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

A) Runoff from above the slope shall be diverted to erosion free outlets.

B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period.

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8) Embankment ponds, those having embankment heights of three (3) feet or greater above natural ground elevation, shall have outslopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less.

9) Permanent impoundments ~~not meeting the size or other qualifying criteria of 30 CFR 77.216(a)~~ shall be provided with a spillway that will safely discharge a ~~fifty~~ (50) twenty-five (25) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors, such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of Section 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

c) Temporary impoundments.

Temporary impoundments ~~not meeting the size or other qualifying criteria of 30 CFR 77.216(a)~~ shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event or such larger event as may be required by the Department based on factors, such as terrain, topography and soil type. Temporary impoundments meeting the size or other criteria of Section 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1817.61 Use of Explosives: General Requirements

a) Sections 1817.61 through 1817.68 apply only to surface blasting activities incident to underground mining, including, but not limited to, initial rounds of slopes and shafts.

b) Each person who conducts surface mining activities shall comply with all applicable State and Federal laws in the use of explosives.

c) All blasting operations shall be conducted by persons certified by the Department in accordance with 62 Ill. Adm. Code 1850.

d) 62 Ill. Adm. Code 1817.62 through 1817.66(b) and 1817.68 apply only to blasting operations that consist of blasts that use more than 25 pounds of explosives or blasting agents.

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ed) Blast design.

1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

A) One thousand (1,000) feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

B) Five hundred (500) feet of an active or abandoned underground mine.

2) The blast design may be presented as part of the permit application or at a time, before the blast, approved by the Department.

3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable air blast, flyrock, and ground vibration standards in Section 1817.67.

4) The blast design shall be prepared and signed by a certified blaster.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1817.64 Use of Explosives: General Performance Standards

a) The operator shall notify, in writing, residents within one-half (1/2) mile of the blasting site, the Department, and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than twenty four (24) hours before blasting will occur.

b) Unscheduled blasting may be conducted only where public or operator health and safety so require. When an operator conducts an unscheduled blast, the operator, using audible warning signals, shall notify residents within one-half (1/2) mile of the blasting site and document the reason(s) for the unscheduled blast in accordance subsection 1817.68(a)(17).

c) All blasting shall be conducted between sunrise and sunset. The Department shall limit the area covered, timing and sequence of blasting as listed in the schedule, if such limitations are

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necessary and reasonable in order to protect public health, safety or welfare.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1817.66 Use of Explosives: Blasting Signs, Warnings, and Access Control

a) Blasting signs shall meet the specifications of Section 1817.11. The operator shall:

1) Conspicuously display signs reading "Blasting ~~Area~~ Site " along the edge of any blasting ~~area~~ site that comes within one hundred (100) feet of any public road right-of-way, and at the point where any other road provides access to the blasting ~~area~~ site; and

2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use" and which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting ~~areas~~ sites and charged holes awaiting firing within the permit area.

b) Warning and all-clear signals of different character or pattern that are audible within one-half (1/2) mile of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (1/2) mile of the permit area shall be notified of the meaning of the signals in the blasting schedule. The requirement to supply daily notice may be fulfilled by the audible warning signals.

c) Access to the blasting ~~area~~ site shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined:

1) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and

2) That access to and travel in or through the ~~area~~ site can be safely resumed.

d)

1) Blasting shall not be conducted within three hundred (300) feet of any building used as a dwelling unless waived by the owner or within three hundred (300) feet of a school, church, hospital, or nursing facility.

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2) Blasting shall not be conducted within one hundred (100) feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid-transmission pipelines, or water and sewage lines.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1817.67 Use of Explosives: Control of Adverse Effects

a) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel or availability of ground or surface waters outside the permit area.

b)

1)

A) Air blast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the person who conducts the surface mining activities and is not leased to any other person. If a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the air blast limitations of this subsection. The waiver shall be submitted to the Department before beginning blasting.

Lower frequency limit of measuring system, Hz ±3dB	Maximum level in dB
0.1 Hz or lower—flat response[1]	134 peak
2.0 Hz or lower—flat response	133 peak
6.0 Hz or lower—flat response	129 peak

[1] Only when approved by the Department

B) The measuring systems used shall have a flat frequency response of at least two hundred (200) Hz at the upper end.

2) The person who conducts blasting may satisfy the provisions of subsection (b) by meeting any of the three (3) specifications in the chart in subsection (b)(1).

3) If necessary to prevent damages specified in subsection (a), the Department shall specify lower maximum allowable airblast levels than those of subsection (b)(1) for use in the vicinity

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of a specific blasting operation.

c)

1) When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than ~~500~~ 350 and when

A) The burden to hole depth ratio is greater than 1.0, or

B) The top stemming height is less than seventy percent (70%) of the burden dimension,

the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (h) and Section 1817.68(b).

2) Cube root scaled distance equals the distance, in feet, from the blast to a specified location divided by the cube root of the maximum weight of explosives, in pounds, to be detonated in any eight (8) millisecond period.

3) To ensure compliance with the limits contained in this Section, the Department may require an air blast measurement of any or all blasts, and may specify the location of such measurements.

d) Flyrock, including blasted material traveling in the air, or along the ground, shall not be cast beyond the permit boundaries or beyond the area of regulated access required under Section 1817.66(c), or more than one-half the distance to the nearest dwelling or other occupied structure.

e) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle velocity shall not exceed one (1) inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. At distances greater than five thousand (5,000) feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall not exceed 0.75 inch per second at the locations of the structures described in this subsection. At distances less than three hundred (300) feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall not exceed 1.25 inches per second at the locations of the structures described in this subsection. These limits shall apply separately to each component of motion as defined in Section 1817.67(h). The Department shall reduce peak particle velocity limits if determined necessary to provide adequate protection if so recommended in any pre-blast survey or condition survey report

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provided pursuant to Section 1817.62.

f) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of subsection (d) shall not apply at the following locations:

1) At structures owned by the person conducting the mining activity, and not leased to another party;

2) At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Department prior to blasting.

g) When the scaled distance, as defined below, has a value of less than sixty (60) at the nearest dwelling, public building, school, church, or commercial or institutional structure, a seismograph recording shall be made at or near the closest structure requiring protection.

1) Scaled Distance = The distance, in feet, from the blast to a specified location divided by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight (8) millisecond period.

2) To ensure compliance with the limits contained in this Section, the Department may require a seismograph recording of any or all blasts and may specify the location at which such recordings are made.

h) As used herein, seismograph recording or record or air blast recording or record shall mean a visually inspectable cartesian representation of the time history of the particle velocity levels or air blast levels versus time. Time is represented on the "X" axis. The particle velocity is shown by three traces representing mutually perpendicular components of motion. The components are oriented vertically, transversely, and longitudinally to the horizontal direction from the recording location to the location of the blast. The air blast time history is represented by a single trace. The record or recording includes either an analog representation of, or a written description of the vertical scale for the particle velocity traces and the air blast trace. The units for the particle velocity traces and scale are in inches per second. The units for the air blast trace and scale are millibars, pounds per square inch, or decibels. The recording also includes an analog or descriptive time scale. The time units are in seconds.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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Section 1817.68 Use of Explosives: Records of Blasting Operations

a) A record of each blast, including seismograph reports, shall be retained by the operator for at least three (3) years and shall be available for inspection by the Department and the public on request. The record is to be completed by the end of the work day following the day in which the blast occurred, including the seismograph meter reading, if available, and shall contain the following data:

1) Name of the operator conducting the blast;

2) Location, date, and time of blast;

3) Name, signature, and certification number of the blaster conducting the blast;

4) The name of the owner or resident of, and the direction and distance, in feet, to the nearest dwelling, school, church, or commercial, or institutional building either:

A) Not located in the permit area; or

B) Not owned by the person who conducts the surface mining activities;

5) Type of material blasted;

6) Number of holes, burden, and spacing;

7) Diameter and depth of holes;

8) Types of explosives used;

9) Total weight of explosives used;

10) Weight of explosives used per hole;

11) Maximum weight of explosives detonated within any eight (8) millisecond period;

12) Maximum number of holes or decks detonated within any eight (8) millisecond period;

13) Initiation system;

14) Type and length of stemming;

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15) Type of delay detonator and delay periods used;

16) Sketch of the delay pattern, including decking and

17) Reasons and conditions for each unscheduled blast; ~~and~~.

~~18) Wind velocity and direction.~~

b) Air blast and/or ground vibration recordings, or photographic copies thereof, where required, shall be kept at the mine site office for a period of three (3) years following the date of the blast, and shall be available for inspection by the Department and the public on request. The recordings shall include the following:

1) Maximum air blast and/or ground vibration levels recorded;

2) The exact location of the monitoring equipment, and its distance from the blast, and the date and time of the recording;

3) Name of the person and firm making the recording;

4) Name of the person and firm analyzing the recording. The recording shall be signed and dated by the person performing the analysis; and

5) The type of instrument, sensitivity, and calibration signal or certification of annual calibration. When the recordings required at Sections 1817.67(c) and 1817.67(g) are produced via digitized systems, the sampling rate of the digitizer, in samples per second, shall be stated.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1817.83 Coal Mine Waste: Refuse Piles

Refuse piles shall meet the requirements of Section 1817.81, the additional requirements of this Section, and the requirements of 30 CFR 77.214 and 77.215 (1986). 30 CFR 77.214 and 77.215 (1986) do not include any later amendments or editions.

a) Drainage control.

1) If the disposal area contains springs, natural or man-made wate courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and

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ensure stability.

2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of Section 1817.43 to safely pass the runoff from a one hundred (100) year, six (6) hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

3) Underdrains shall comply with the requirements of Section 1817.71~~(1)~~(1)(2).

b) Surface area stabilization. Slope protection shall be provided to minimize erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected from erosion, shall be revegetated upon completion of construction.

c) Placement.

1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 1817.22. If approved by the Department, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

2) The final configuration of the refuse pile shall be suitable for the approved post-mining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, erosion control, conservation of soil moisture, or facilitation of the approved post-mining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (fifty (50) percent).

3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the Department if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four (4) feet of the best available nontoxic and noncombustible material, in a manner

that does not impede drainage from the underdrains. The Department may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of Sections 1817.111 through 1817.116 will be met.

d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

A) Foundation preparation including the removal of all organic material and topsoil;

B) Placement of underdrains and protective filter systems;

C) Installation of final surface drainage systems; and

D) The final graded and revegetated facility.

E) Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger or harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated.

2) The qualified registered professional engineer shall provide a sealed report to the Department promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and 62 Ill. Adm. Code 1700 through 1850. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

3) The sealed report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system in constructed in phases, each phase shall be sealed separately. The photographs accompanying each sealed report shall be taken in adequate size and number with enough terrain or other physical features of the site

shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

4) A copy of each inspection report shall be retained at or near the minesite.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1817.97 Protection of Fish, Wildlife and Related Environmental Values

a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and shall achieve enhancement of such resources where practicable.

b) No underground mining activity shall be conducted which ~~will~~ is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the United States Department of the Interior (Secretary) or which ~~will~~ is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.). The operator shall immediately report to the Department any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

c) No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the Department any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and after consultation, shall identify whether, and under what conditions, the operator may proceed in order to ensure that the operation is not in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.).

d) Nothing in these regulations shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.), or the Bald Eagle Protection Act, as amended, (16 U.S.C. 668 et seq.).

e) Each operator shall, to the extent possible using the best

technology currently available:

1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Department determines that such requirements are unnecessary due to factors, such as the absence of raptors;

2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law specified in 62 Ill. Adm. Code 1773.12; and

3) Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Department determines that such requirements are unnecessary due to factors, such as the absence of large mammals; and

4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

f) The operator conducting underground mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife such as wetlands and riparian vegetation.

g) Where fish and wildlife habitat is to be a post-mining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

1) Their proven nutritional value for fish or wildlife.

2) Their use as cover for fish or wildlife.

3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

h) Where cropland is to be the post-mining land use, where appropriate for wildlife and crop management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to

diversify habitat types for birds and other animals.

i) Where residential, public service, or industrial uses are to be the post-mining land use, and where consistent with the approved post-mining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1817.122 Subsidence Control: Public Notice

At least six (6) months prior to mining, or within that period if approved by the Department, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, the type of mining to be employed, a description of measures that will be taken to prevent subsidence and/or to mitigate subsidence damages which may occur, and the location or locations where the operator's subsidence control plan may be examined. The operator shall maintain copies of all of the public notices mailed pursuant to this Section and shall make such copies available for inspection by authorized agents of the Department.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: Permit Applications -- Minimum Requirements for Legal, Financial, Compliance, and Related Information

2) Code Citation: 62 Ill. Adm. Code 1778

3) Section Number: Proposed Action

1778.13	Amended
1778.14	Amended

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On May 11, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17. The following discussion describes the Department's proposed amendments to Part 1778 in response to this OSMRE directive:

Section 1778.13 sets forth the Department's requirements for the identification of interests in permit applications. The proposed amendment to subsection (b) expands the information requirements for permit applications to include the person who will pay the abandoned mine land reclamation fees. The proposed amendments to subsections (c) and (d) expands this Section's informational requirements to include persons who own or control the applicant, as defined in proposed 62 Ill. Adm. Code 1773.5. Proposed new subsection (i) requires the applicant to update the identification of interests section of the permit application after Departmental approval, if necessary. Proposed new subsection (j) requires the applicant to submit all identification of interests and violation and compliance information in a prescribed format. The proposed amendments to Section 1778.13 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 778.13.

Section 1778.14 sets forth the Department's requirements for violation information in the permit application. The proposed amendments to subsection (c) adds language requiring that each permit application include a list of all unabated cessation orders and unabated air or water quality violation notices received prior to the date of the

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application by any surface coal mining and reclamation operation owned or controlled by either the applicant or any person who owns or controls the applicant. Proposed new subsection (e) requires the appplicant to update the compliance and violation section of the permit application after Departmental approval, if necessary. The proposed amendments of Section 1778.14 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 778.14.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___ Yes _X_ No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant

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to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments receiv ' thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1778
PERMIT APPLICATIONS—MINIMUM REQUIREMENTS
FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Section
1778.4 Responsibility (Repealed)
1778.11 Applicability (Repealed)
1778.13 Identification of Interests
1778.14 Violation Information
1778.15 Right of Entry Information
1778.16 Relationship to Areas Designated Unsuitable for Mining
1778.17 Permit Term
1778.18 Insurance
1778.20 Identification of Location of Public Office for Filing of Application (Repealed)
1778.21 Proof of Publication
1778.22 Facilities or Structures Used in Common

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9348; amended at 11 Ill. Reg. 8368, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1778.13 Identification of Interests

An application to conduct surface coal mining and reclamation operations shall contain the following information, except that the submission of a social security number is voluntary:

a) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

b) Names, addresses, and telephone numbers and, as applicable, social security and employer identification number of the applicant, the operator (if different from the applicant), the person who will pay the abandoned mine land reclamation fee, and the applicant's resident agent who will accept service of process.

c) ~~For applicants other than single proprietorships, where applicable:~~

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For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 62 Ill. Adm. Code 1773.5, as applicable.

1) ~~Name and address of each officer, partner, principal, principal shareholder, and director or other person performing a function similar to a director.~~

The person's name, address, social security number and employer identification number.

2) ~~All names under which the applicant, partner, or principal shareholder operates or previously operated a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application.~~

The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3) The title of the person's position, date position was assumed, and when submitted under 62 Ill. Adm. Code 1773.17(h), date of departure from the position;

4) Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

d) ~~A statement of any pending surface coal mining and reclamation operation permit applications in the United States, and of all current and previous coal mining permits in the United States held during the five (5) years preceding the date of the application by any person identified in subsection (c)(2). Such statement shall provide permit or application numbers or other identifiers and the identity of the State regulatory authority for each operation listed.~~

For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls"

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in 62 Ill. Adm. Code 1773.5, the operation's:

1) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

e) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

f) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

g) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval, pursuant to 30 CFR 77(1986).

h) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this section which is not on public file pursuant to State law shall be held in confidence by the Department, as provided under 62 Ill. Adm. Code 1773.13(d)(3)(B).

i) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under subsections (a) through (d).

j) The applicant shall submit the information required by Sections 1778.13 and 1778.14 in any format prescribed and issued by the Department.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1778.14 Violation Information

An application shall contain the following:

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a) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1) Had a Federal or State coal mining permit suspended or revoked in the last five (5) years preceding the date of submission of the application; or

2) Forfeited a performance bond or similar security deposited in lieu of bond,

b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including:

1) Identification number and date of issuance of the permit and the date and amount of bond or similar security;

2) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

3) The current status of the permit, bond, or similar security involved;

4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5) The current status of these proceedings.

c) ~~A listing of all violation notices received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation, or of any provision of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (Act) pertaining to air or water environmental protection. The application shall also contain the following information about each violation notice:~~

For any violation of a provision of the Federal Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the

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three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1) ~~The date of issuance and identity of the issuing Department, or agency;~~

Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

2) A brief description of the violation alleged in the notice;

3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (c) to obtain administrative or judicial review of the violations;

4) The current status of the proceedings and of the violation notice; and

5) The actions, if any, taken by any person identified in subsection (c) to abate the violation.

d) Information about the applicant's present financial condition which would provide assurance to the Department that no further forfeiture would be expected,

e) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under Section 1778.14.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Requirements for Coal Exploration

2) Code Citation: 62 Ill. Adm. Code 1772

3) Section Number: Proposed Action

1772.12 Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On June 9, 1987, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying Illinois rules concerning historic properties that must be amended in order to be no less effective than their Federal counterparts. Although the Department initiated rulemaking in a timely manner, the Department delayed promulgating final historic properties rules given the existence of litigation challenging the validity of the underlying Federal rules. By letter dated January 30, 1989, OSMRE advised the Department that the pending litigation concerning the Federal historic properties rules can no longer serve to delay the State rulemaking process.

The following discussion describes the Department's proposed amendments to Part 1772 in response to this OSMRE directive:

Section 1772.12 sets forth the permit requirements for exploration removing more than two hundred and fifty (250) tons of coal. The proposed amendments to Section 1772.12 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 772.12, by requiring the applicant to provide, at the Department's request, other information regarding known or unknown historic or archeological resources.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_ No

If "Yes," please specify the date: _____

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8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1772
REQUIREMENTS FOR COAL EXPLORATION

Section
1772.1 Scope and Purpose
1772.11 Notice Requirements for Exploration Removing 250 Tons of Coal or Less
1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal
1772.13 Coal Exploration Compliance Duties
1772.14 Requirements for Commercial Sale
1772.15 Public Availability of Information

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 11 Ill. Reg. 8385, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal

a) Any person who intends to conduct coal exploration outside a permit area during which more than two hundred and fifty (250) tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under 62 Ill. Adm. Code 1761 through 1764 shall before conducting the exploration submit an application and obtain written approval from the Department in an exploration permit.

b) Each application for an exploration permit shall contain, at a minimum, the following information:

1) The name, address, and telephone number of the applicant;

2) The name, address, and telephone number of the applicant's representative who will be present at, and be responsible for, conducting the exploration;

3) A narrative and map describing the proposed exploration area;

4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation;

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5) An estimated time table for conducting and completing each phase of the exploration and reclamation;

6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amounts;

7) A statement of why extraction of more than two hundred and fifty (250) tons of coal is necessary for exploration;

8) A description of:

A) Cultural or historical resources listed on the National Register of Historic Places, ~~and~~

B) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places, ~~and~~

C) Known archeological resources located within the proposed exploration area; and

D) Any other information which the Department may require regarding known or unknown historic or archeological resources;

9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area;

10) A description of the measures to be used to comply with the applicable requirements of 62 Ill. Adm. Code 1815;

11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

12) A map or maps at a scale of 1:24,000 or larger, showing the areas of the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

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13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

c) Public notice of the application and opportunity to comment shall be provided as follows:

1) Within five (5) days, the applicant shall provide public notice of the filing of an administratively complete application with the Department in a newspaper of general circulation which is on the Department's list of approved newspapers in the county of the proposed exploration area;

2) The public notice shall state the name and address of the person seeking approval, the date of filing of the application, the address of the Department where written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration. In no case shall the public comment period be less than thirty (30) days;

3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within the specified public comment period.

d) Decision on an application for exploration removing more than two hundred and fifty (250) tons of coal.

1) The Department shall act upon an administratively complete application for a coal exploration permit and any written comments within sixty (60) days after the close of the public comment period. The approval of a coal exploration permit may be based only on a complete and accurate application.

2) The Department shall approve a complete and accurate application for a coal exploration operation filed in accordance with this Part, if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will:

A) Be conducted in accordance with the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.)(Act), 62 Ill. Adm. Code 1815, this Part and the regulatory program;

B) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the

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Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species as defined in Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532); and

C) Not adversely affect any cultural or historic resources listed on the National Register of Historic Places, pursuant to the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq., 1976, Supp. V), unless the proposed exploration has been approved by the Department and the agency with jurisdiction over State Historic Preservation.

3) Terms of approval. Each approval issued by the Department shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the Act, this Part, 62 Ill. Adm. Code 1815, and the regulatory program.

e)

1) The Department shall notify the applicant, the appropriate local government officials, and other commentors on the application in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the Department at a public office in the vicinity of the exploration operations.

2) Any person with an interest which is or may be adversely affected by a decision of the Department pursuant to subsection (e)(1), shall have the opportunity for administrative and judicial review as set forth in 62 Ill. Adm. Code 1775.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Requirements for Permits and Permit Processing

2) Code Citation: 62 Ill. Adm. Code 1773

3)

Section Number:	Proposed Action
1773.5	New Section
1773.11	Amendment
1773.15	Amendment
1773.17	Amendment
1773.19	Amendment
1773.20	New Section
1773.21	New Section

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On June 9, 1987, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying Illinois rules concerning historic properties that must be amended in order to be no less effective than their Federal counterparts. Although the Department initiated rulemaking in a timely manner, the Department delayed promulgating final historic properties rules given the existence of litigation challenging the validity of the underlying Federal rules. By letter dated January 30, 1989, OSMRE advised the Department that the pending litigation concerning the Federal historic properties rules can no longer serve to delay the State rulemaking process.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On May 11, 1989, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Mining Control and Reclamation Act of 1977.

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The following discussion describes the Department's proposed amendments to Part 1773 in response to these OSMRE directives and agency concerns:

Proposed new Section 1773.5 defines the phrases "owned or controlled" and "owns or controls" in accordance with the OSMRE counterpart rule, 30 CFR 773.5.

Section 1773.11 sets forth the Department's requirements for obtaining permits. The proposed amendments to Section 1773.11 serve to make the Department's rules consistent with the OSMRE counterpart regulation, 30 CFR 773.11, by restricting the permit renewal requirement to those operations actively conducting surface coal mining operations.

Section 1773.15 sets forth the Department's permit application review requirements. The proposed amendments to Section 1773.15 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 773.15.

Subsection (b) is amended to prohibit the issuance of permits to any person currently in violation of the Federal Act who owns or controls the permit applicant, in accordance with 30 CFR 773.15(b).

Subsection (c) is amended to include two (2) new permit findings and to delete a permit finding. First, the finding concerning cemeteries in subsection (c)(11) is being deleted since the language of this finding is inconsistent with the definition of cemeteries set forth in 62 Ill. Adm. Code 1701.Appendix A and because this finding is made redundant by the finding in subsection (c)(3)(B). Second, for a proposed remining operation where the applicant intends to reclaim to the lesser standards applicable to remining, the Department must make a specific finding that the site of the operation is a previously mined area. Third, the Department must make a finding that it has taken into account the effect of the proposed permitting action on properties listed or eligible for listing on the National Register of Historic Places.

Finally, the Department has proposed a new subsection (e), in accordance with 30 CFR 773.15(e). Subsection (e) would require the Department to reconsider any approved permit, prior to issuance, based on a review of any new violation and compliance information submitted pursuant to proposed new 62 Ill. Adm. Code 1778.13(i) and 1778.14(e).

Section 1773.17 sets forth the Department's required permit conditions. Proposed new subsection (h) adds a new permit condition, in accordance with 30 CFR 773.17(i). Subsection (h) would require that, in the absence of a legal stay, within thirty (30) days after

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issuance of a cessation order for operations conducted under the permit, the permittee must notify the Department of any changes that have occurred in the ownership and information submitted at the time of application or since submittal of the last update of this information.

Section 1773.19 sets forth the Department's requirements for permit issuance and right of renewal. The proposed amendment to subsection (a)(2) brings the Department's rules in conformance with Section 2.11(f) of the Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7902.11(f).

Proposed new Sections 1773.20 and 1773.21 outline the Department's procedures for identifying and rescinding improvidently issued permits. Sections 1773.20 and 1773.21 outline procedures consistent with the counterpart OSMRE rules, 30 CFR 773.20 and 773.21.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300

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P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1773
REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Section
1773.1 Scope and Purpose
1773.5 Definitions
1773.11 Requirements to Obtain Permits
1773.12 Regulatory Coordination with Requirements under Other Laws
1773.13 Public Participation in Permit Processing
1773.14 Opportunity for Public Hearing
1773.15 Review of Permit Applications
1773.17 Permit Conditions
1773.19 Permit Issuance and Right of Renewal
1773.20 Improvidently Issued Permits: General Procedures
1773.21 Improvidently Issued Permits: Rescission Procedures

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 11 Ill. Reg. 8395, effective July 1,1987; amended at __ Ill. Reg. _____; effective _____, 1990.

Section 1773.5 Definitions

For purposes of Part 1773, owned or controlled and owns or controls means any one of a combination of the relationships specified in subsections (a) or (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.

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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: Added at __ Ill. Reg. _____, effective _____, 1990)

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 ~~and reclamation~~ 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 Mines and Minerals (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

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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 (Ill. Rev. Stat. 1985, ch. 96 1/2, pars. 7901.01 et seq.) (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 __ Ill. Reg. _____, effective _____, 1990)

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 issue a written decision, in accordance with Section 1773.19, either granting, requiring modification of, or denying the application. If an informal conference is held under Section 1773.13(c), the decision shall be made within sixty (60) days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3).

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) ~~The Department shall make a finding that any surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of the Federal Act or in violation of any Federal law, rule, or regulation, or any State law, rule or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. If such a finding cannot be made the Department shall require the applicant, before the issuance of the permit, to either:~~

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Based on available information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to Section 8.04 of the State Act and Section 518 of Federal the Act, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, 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 or any other law, rule or regulation referred to in this subsection. 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 has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except 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 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 court reviewing the violation, pursuant to 62 Ill. Adm. Code 1775.13, either denies a stay applied for in the appeal or affirms the violation, then the applicant shall ~~promptly~~ submit the proof required under subsection (b)(1)(A) within thirty (30) days of the court's decision.

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2) ~~The Department may issue a permit conditionally pending the outcome of an appeal described in subsection (b)(1)(B).~~

Any permit that is issued on the basis of proof submitted under subsection (b)(1)(A) that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B), 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 Acts 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 Acts, 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 1775.11.

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 or the proposed shadow area for a planned subsidence operation 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

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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 subject to the prohibitions or limitations of 62 Ill. Adm. Code 1761.11 and 1761.12.

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 U.S.C. 1531 et seq.).

11) ~~Surface coal mining and reclamation operations will not adversely affect a private family burial ground. Adversely affecting a private family burial ground shall not include relocation authorized by State law.~~

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.

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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.

d) Performance bond submittal.

If the Department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 62 Ill. Adm. Code 1800.

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 Sections 1778.13(i) and 1778.14(e).

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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

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presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Department 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 Section 1843.11, 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).

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(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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~~, unless waived by the applicant~~:

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, which ever 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.

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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 deemed to be issued when:

1) The permit application, as originally submitted or as modified, is approved by the Department;

2) No request for hearing on the permit approval, pursuant to 62 Ill. Adm. Code 1775, is received by the Department within thirty (30) days after the permit applicant is mailed a copy of the final permit decision; and

3) 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 (a) 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 may 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:

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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 __ Ill. Reg. _____, effective _____, 1990)

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 the 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

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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

3) 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 was severed the permittee continues to be responsible for the violation, penalty or fee.

c) Remedial measures. If the Department finds, under subsection (b), 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 a reasonable 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 under Section 1773.21.

(Source: Added at __ Ill. Reg. _____, effective _____, 1990)

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, that:

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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 as required by the Department; and

c) Right to appeal. The permittee may file a request for an administrative hearing to contest the notice under 62 Ill. Adm. Code 1775.11.

(Source: Added at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

2) Code Citation: 62 Ill. Adm. Code 1774

3) Section Number: Proposed Action

1774.15	Amendment
1774.17	Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

The Illinois Department of Mines and Minerals (Department) has identified rules that must be amended in order to correct typographical errors and to more effectively carry out Illinois' responsibilities under the Surface Mining Control and Reclamation Act of 1977.

The following discussion describes the Department's proposed amendments to Part 1774 in response to these agency concerns:

Section 1774.15 sets forth the Department's requirements for permit renewals, in conformance with 30 CFR 774.15. The citation to 62 Ill. Adm. Code 1773.19(b) in Section 1774.15(b)(3) was changed to Section 1773.19(a)(3) in order to correct a typographical error.

Section 1774.17 sets forth the Department's requirements for the transfer, assignment, or sale of permit rights, in conformance with 30 CFR 774.17. A new sentence was added to Section 1774.17(b)(2) clarifying the number of newspaper advertisements that must be published when an application under this Section is filed with the Department.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

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8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF MINES AND MINERALS

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1774
REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Section
1774.1 Scope and Purpose
1774.11 Department Review of Permits
1774.13 Permit Revisions
1774.15 Permit Renewals
1774.17 Transfer, Assignment, or Sale of Permit Rights

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 11 Ill. Reg. 8469, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1774.15 Permit Renewals

a) A valid permit 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.

b) Application requirements and procedures.

1) An application for renewal of a permit shall be filed with the Department at least one hundred and eighty (180) days before expiration of the existing permit term.

2) An application for renewal of a permit shall be in the form required by the Department and shall include at a minimum:

A) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

B) Evidence that a liability insurance policy or adequate self-insurance under 62 Ill. Adm. Code 1800.60 will be provided by the applicant for the proposed period of renewal;

C) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the Department pursuant to 62 Ill. Adm. Code 1800;

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D) A copy of the proposed newspaper notice and proof of publication of same, as required by 62 Ill. Adm. Code 1778.21; and

E) Additional revised or updated information required by the Department.

3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in 62 Ill. Adm Code 1773.13 and 1773.19~~(b)~~(a)(3).

4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and be subject to the requirements of Section 1774.13.

5) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the permit area boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the Act, and 62 Ill. Adm. Code 1773, 1777, 1778, 1779, 1780, 1783, 1784, 1785, and 1800.

c) Approval process.

1) Criteria for approval. The Department shall approve a complete and accurate application for permit renewal, unless it finds, in writing:

A) The terms and conditions of the existing permit are not being satisfactorily met;

B) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program;

C) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the Act and the regulatory program on existing permit areas;

D) The operator has not provided evidence of having liability insurance or self-insurance as required in 62 Ill. Adm. Code 1800.60;

E) The operator has not provided evidence that any performance bond required to be in effect for the

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operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Department might require pursuant to 62 Ill. Adm. Code 1800; or

F) Additional revised or updated information required by the Department has not been provided by the applicant.

2) Burden of proof. In the determination of whether to approve or deny the renewal of a permit, the burden of proof shall be on the opponents of renewal.

d) Renewal term. Any permit renewal shall be for a term not to exceed the period of the original permit established under 62 Ill. Adm. Code 1773.19.

e) Notice of decision. The Department's decision issued pursuant to subsection (c) shall be made before the expiration of the original permit term. Within five (5) working days, the Department shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to the Office of Surface Mining Reclamation and Enforcement (OSMRE).

f) Administrative and judicial review. Any person having an interest which is or may be adversely affected by the decision of the Department shall have the right to administrative and judicial review set forth in 62 Ill. Adm. Code 1775.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1774.17 Transfer, Assignment, or Sale of Permit Rights

a) No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the Department.

b) An applicant for approval of the transfer, assignment, or sale of permit rights shall:

1) Provide the Department with an application for approval of the proposed transfer, assignment, or sale including:

A) The name and address of the existing permittee and permit number or other identifier;

B) A brief description of the proposed action requiring approval; and

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C) The legal, financial, compliance, and related information required by 62 Ill Adm. Code 1778 for the applicant for approval of the transfer, assignment, or sale of permit rights.

2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent†. The advertisement shall be published at least once a week for two (2) consecutive weeks. A copy of the advertisement shall be submitted to the Department.

3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under 62 Ill. Adm. Code 1800.

c) Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Department within thirty (30) days of the public notice required under subsection (b)(2).

d) The Department shall allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing, within sixty (60) days of the close of the public comment period in subsection (c), that the successor:

1) Is eligible to receive a permit in accordance with 62 Ill. Adm. Code 1773.15(b) and (c);

2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by 62 Ill. Adm. Code 1800; and

3) Meets any other requirements specified by the Department.

e) Notification.

1) Within five (5) working days of issuance, the Department shall notify the permittee, the successor, commenters, and OSMRE of its findings.

2) The successor shall immediately provide notice to the Department of the consummation of the transfer, assignment, or

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sale of permit rights.

f) The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this Part.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: State Enforcement

2) Code Citation: 62 Ill. Adm. Code 1843

3) Section Number: Proposed Action

1843.11 Amended

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On May 11, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17. In addition, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Mining Control and Reclamation Act of 1977.

The following discussion describes the Department's proposed amendments to Part 1843 in response to this OSMRE directive and these agency concerns:

Section 1843.11 sets forth the Department's procedures for issuing cessation orders to surface coal mining and reclamation operations and coal exploration operations. The proposed amendment to subsection (a)(2) limits the automatic issuance of cessation orders for non-permitted operations to those operators actually engaged in surface coal mining. Proposed new subsection (g) requires that, within sixty (60) days of the issuance of a cessation order, the Department shall notify all owners and controllers identified pursuant to 62 Ill. Adm. Code 1773.17(h), 1778.13(c) and 1778.13(d), as amended. The proposed amendments to Section 1843.11 serve to make the Department's requirements consistent with OSMRE counterpart regulation, 30 CFR 843.11.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_ No

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If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

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The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1843
STATE ENFORCEMENT

Section
1843.11 Cessation Orders
1843.12 Notices of Violation
1843.13 Suspension or Revocation of Permits
1843.14 Service of Notices of Violation, Cessation Orders, and Show Cause Orders
1843.15 Informal Public Hearing
1843.16 Formal Review of Citations
1843.17 Temporary Injunctive Relief
1843.18 Inability to Comply
1843.19 Injunctive Relief (Repealed)
1843.20 Intervention
1843.21 Discovery
1843.22 Petitions for Award of Costs and Expenses Under Section 525(e) of the Federal Act

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 5932; amended at 9 Ill. Reg. 13334, effective October 10, 1985; amended at 11 Ill. Reg. 8536, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1843.11 Cessation Orders

a)

1) An authorized representative of the Illinois Department of Mines and Minerals (Department) shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he finds, on the basis of any State inspection, any condition or practice, or any violation 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 (Ill. Rev. Stat. 1985, ch. 96 1/2, pars. 7901.01 et seq.) (State Act), 62 Ill. Adm. Code 1700 - 1850 or any condition of an exploration approval or permit imposed under the Federal Act, the State Act or 62 Ill. Adm. Code 1700 - 1850 which:

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A) Creates an imminent danger to the health or safety of the public; or

B) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

2) Surface coal mining ~~and reclamation~~ operations conducted by any person without a valid surface coal mining permit constitutes a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

A) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

B) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State of Illinois.

3) If the cessation order under subsection (a)(1) will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Department shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

b)

1) An authorized representative of the Department shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the relevant portion thereof, when a notice of violation has been issued under Section 1843.12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

2) A cessation order issued under subsection (b)(1) shall require the person to whom it is issued to take all steps the authorized representative of the Department deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

c) A cessation order issued under subsections (a) or (b) shall be in

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writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

1) The nature of the condition, practice or violation;

2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

3) The time established for abatement, if appropriate, including the time for meeting any interim steps; and

4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice, or violation has been abated or until vacated, modified, or terminated in writing by an authorized representative of the Department or until the order expires pursuant to Section 1843.15.

d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

e) An authorized representative of the Department may modify, terminate, or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

f) An authorized representative of the Department shall terminate a cessation order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under 62 Ill. Adm. Code 1845.

g) Within sixty (60) days after issuing a cessation order, the Department shall notify in writing any person who has been identified under 62 Ill. Adm. Code 1773.17(h) and 1778.13(c) and (d) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: Surface Mining Permit Applications - Minimum Requirements for Information on Environmental Resources

2) Code Citation: 62 Ill. Adm. Code 1779

3) Section Number: Proposed Action

1779.12	Amendment
1779.20	Repeal

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On June 9, 1987, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying Illinois rules concerning historic properties that must be amended in order to be no less effective than their Federal counterparts. Although the Department initiated rulemaking in a timely manner, the Department delayed promulgating final historic properties rules given the existence of litigation challenging the validity of the underlying Federal rules. By letter dated January 30, 1989, OSMRE advised the Department that the pending litigation concerning the Federal historic properties rules can no longer serve to delay the State rulemaking process.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

The following discussion describes the Department's proposed amendments to Part 1779 in response to these OSMRE directives:

Section 1779.12 sets forth the Department's requirements for general environmental resources information for surface coal mining permit applications. The proposed amendments to Section 1779.12 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 779.12, by permitting the Department to require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places through the collection of additional information, including conducting field investigations.

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Section 1779.20 sets forth the Department's requirements for fish and wildlife information for surface coal mining permit applications. The Department proposes to repeal this Section and to add its requirements to 62 Ill. Adm. Code 1780.16, as amended.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. Monday, October 2, 1989. Comments received thereafter will

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not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 306, Springfield, Illinois.

12) Initial Regulatory Flexibility Anelysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1779
SURFACE MINING PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Section
1779.4 Responsibilities
1779.5 Use of Existing Data
1779.6 Use of Expert Opinion
1779.7 Seasonal Water Quality Data (Repealed)
1779.11 General Requirements
1779.12 General Environmental Resources Information
1779.13 Description of Hydrology and Geology: General Requirements (Repealed)
1779.14 Geology Description (Repealed)
1779.15 Ground Water Information (Repealed)
1779.16 Surface Water Information (Repealed)
1779.17 Alternative Water Supply Information (Repealed)
1779.19 Vegetation Information
1779.20 Fish and Wildlife Resources Information (Repealed)
1779.21 Soil Resources Information
1779.22 Land use Information
1779.24 Maps: General Requirements
1779.25 Cross Sections, Maps and Plans
1779.27 Prime Farmland Investigation (Repealed)

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 10013; amended at 11 Ill. Reg. 8585, effective July 1, 1987; amended at __ Ill. _____, effective _____, 1990.

Section 1779.12 General Environmental Resources Information

Each application shall describe and identify:

a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

b)

1) The nature of cultural, archeological and historic resources

adjacent areas. The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies.

2) If the information provided pursuant to subsection (b)(1) is not adequate to enable the Department to make the finding required in 62 Ill. Adm. Code 1773.15(c)(12) because information available to the Department indicates a substantial likelihood of currently unknown resources which would be eligible for the National Register of Historic Places within the proposed permit or adjacent areas, the Department shall require the applicant to submit additional information to enable the Department to identify and evaluate such resources. An applicant shall be required to conduct field investigations under this subsection as determined necessary by the Department.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1779.20 Fish and Wildlife Resources Information

~~a) Each application shall include a study of fish and wildlife and their habitats within the proposed mine plan area and the portions of the adjacent areas where effects on such resources may be expected to occur.~~

~~b) Prior to initiating such studies, the applicant shall contact the Department to determine, in accordance with subsection (c), what fish and wildlife resources information will be required.~~

~~c) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:~~

~~1) Published data and other information;~~

~~2) Site-specific information obtained by the applicant; and~~

~~3) Written guidance obtained from agencies consulted.~~

(Source: Repealed at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: Surface Mining Permit Application--Minimum Requirements for Reclamation and Operation Plan

2) Code Citation: 62 Ill. Adm. Code 1780

3)

Section Number:	Proposed Action
1780.16	Amendment
1780.21	Amendment
1780.31	Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On June 9, 1987, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying Illinois rules concerning historic properties that must be amended in order to be no less effective than their Federal counterparts. Although the Department initiated rulemaking in a timely manner, the Department delayed promulgating final historic properties rules given the existence of litigation challenging the validity of the underlying Federal rules. By letter dated January 30, 1989, OSMRE advised the Department that the pending litigation concerning the Federal historic properties rules can no longer serve to delay the State rulemaking process.

On October 25, 1988, OSMRE conditionally approved the Department's amendments to its permanent regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). See 53 Fed. Reg. 43112 (October 25, 1988). OSMRE's approval of Illinois' amendments to its regulatory program was conditioned upon the submittal of new amendments designed to correct defects identified in Illinois' rules.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under SMCRA and under Section 4.02 of the Illinois Administrative Procedure

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Act (IAPA). Ill. Rev. Stat. 1987, ch. 127, par. 1004.02.

The following discussion describes the Department's proposed amendments to Part 1780 in response to these OSMRE directives and agency concerns.

Section 1780.16 sets forth the Department's requirements for fish and wildlife plans in surface coal mining permit applications. The Department's proposed amendments to Section 1780.16 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 780.16.

Section 1780.21 sets forth the Department's requirements for hydrologic information in surface coal mining permit applications. The Department's proposed amendments to Section 1780.21(a) serve to correct a typographical error in the address of the Department's Land Reclamation Division. The Department's proposed amendments to Section 1780.21(f) serve to to make the Department's rules for the determination of probable hydrologic consequences consistent with the counterpart OSMRE regulation, 30 CFR 780.21(f). The Department's proposed amendments to Section 1780.21(i) serve to define when the Department may exercise its power to waive the ground water monitoring requirement, in accordance with Section 4.02 of the IAPA.

Section 1780.31 sets forth the Department's requirements for the protection of public parks and historic places applicable to surface coal mines. The proposed amendments to Section 1780.31 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 780.31, by requiring the applicant to prevent or minimize the impacts of proposed operations on privately-owned places listed on the National Register of Historic Places and by allowing the Department to specify appropriate mitigation and treatment measures for places listed and eligible for Register listing.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

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No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1780
SURFACE MINING PERMIT APPLICATION—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section
1780.4 Responsibilities
1780.5 Use of Existing Data
1780.6 Use of Expert Opinion
1780.11 Operation Plan: General Requirements
1780.12 Operation Plan: Existing Structures
1780.13 Operation Plan: Blasting
1780.14 Operation Plan: Maps and Plans
1780.15 Air Pollution Control Plan
1780.16 Fish and Wildlife Plan
1780.18 Reclamation Plan: General Requirements
1780.21 Hydrologic Information
1780.22 Geologic Information
1780.23 Reclamation Plan: Post-mining Land Uses
1780.25 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
1780.27 Reclamation Plan: Surface Mining Near Underground Mining
1780.29 Diversions
1780.31 Protection of Public Parks and Historic Places
1780.33 Relocation or Use of Public Roads
1780.35 Disposal of Excess Spoil
1780.37 Transportation Facilities
1780.38 Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 8511; amended at 11 Ill. Reg. 8602, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1780.16 Fish and Wildlife Plan

a) ~~Each application shall contain a fish and wildlife plan, consistent with 62 Ill. Adm. Code 1816.97 which provides:~~

Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

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1) ~~A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the mine plan area and portions of adjacent areas as determined by the Department pursuant to 62 Ill. Adm. Code 1779.20(c).~~

The scope and level of detail for such information shall be determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under subsection (b).

A) Prior to initiating such studies, the applicant shall contact the Department to determine, in accordance with subsection (B), what fish and wildlife resources information will be required.

B) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:

i) Published data and other information;

ii) Site-specific information obtained by the applicant; and

iii) Written guidance obtained from agencies consulted.

2) ~~If the applicant states that it will not be practicable, in accordance with subsection (a)(1), to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 62 Ill. Adm. Code 1816.111 through 1816.117, a statement shall be provided which establishes why it is not practicable to achieve such a condition.~~

Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or those species or habitats protected by similar State statutes;

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B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

C) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

b) ~~A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:~~

Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall—

1) ~~Threatened or endangered species of plants or animals listed by the Secretary of the United States Department of the Interior (Secretary) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) and their critical habitats;~~

Be consistent with the requirements of 62 Ill. Adm. Code 1816.97;

2) ~~Species such as eagles, migratory birds or other animals protected by State or Federal law, and their habitats; or other species identified through the consultation process pursuant to 62 Ill. Adm. Code 1779.20; or~~

Apply, at a minimum, to species and habitats identified under subsection (a); and

3) ~~Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.~~

Include—

A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

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B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

c) Fish and Wildlife Service review. Upon request, the Department shall provide the resource information required under subsection (a) and the protection and enhancement plan required under subsection (b) to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1780.21 Hydrologic Information

a) All water quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," (1980) which is incorporated by reference, or the methodology in 40 CFR 136 and 434. Water quality sampling performed to meet the requirements of this Section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" (1980) is a joint publication of the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW., Washington D.C. 20036. This document is also available for inspection at the Land Reclamation Division, Department of Mines and Minerals, ~~227 South 7th Street, Rm. 201, Springfield, Ill., 62701~~ 300 West Jefferson Street, Suite 300, P.O. Box 10197, Springfield, Illinois 62791-0197.

b) The application shall contain the following baseline hydrologic information. When this information is insufficient for the Department to determine if adverse impacts may result to the

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hydrologic balance, additional information shall be required, such as but not limited to water supply contamination or diminution.

1) Ground water information. The location and ownership for the permit and adjacent area of existing wells, springs, and other ground water resources, seasonal quality and quantity of ground water, and usage.

   A) Ground water quality descriptions shall include, at a minimum, pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron and total manganese. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored.

   B) Ground water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and elevation of the potentiometric surface in the coal to be mined, in each water-bearing stratum above the coal to be mined, and in each water-bearing stratum which may be potentially impacted below the coal to be mined.

2) Surface water information. The name, location, ownership, and description of all surface water bodies, such as streams, lakes, and impoundments, the location of any discharge into any surface water body in the proposed permit and adjacent areas, and information on surface water quality and quantity sufficient to demonstrate seasonal variation and water usage.

   A) Water quality descriptions shall include, at a minimum, baseline information on pH, total suspended solids, total dissolved solids, alkalinity, acidity, sulfates, total iron and total manganese. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all surface water points being monitored.

   B) Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

3) If the determination of probable hydrologic consequences required by subsection (f) indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is

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present that may result in the contamination of ground or surface water supplies, then information supplemental to that required under subsections (1) and (2) shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information shall be based upon drilling, hydrogeologic analyses of water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

c) Baseline cumulative impact area information.

   1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface and ground water systems as required by subsection (g) shall be provided to the Department, if available from appropriate Federal or State agencies.

   2) If the information is not available from such agencies, then the applicant may gather and submit this information to the Department as part of the permit application.

   3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the Department.

d) The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application if such techniques will enhance the evaluation of hydrological impacts, but actual surface and ground water information may be required by the Department for the purposes of calibration of such models for each site even when such techniques are used.

e) If the determination of probable hydrologic consequences required in subsection (f) indicates that the proposed mining operation may proximately result in the contamination, diminution, or interruption of an underground or surface water source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of the alternate water source for existing premining uses and approved post-mining land uses.

f) Determination of the probable hydrologic consequences (PHC).

   1) The application shall contain a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed permit area and adjacent area, with

respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the Department if such parameters are necessary to assure an accurate determination of probable hydrologic consequences.

2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

3) The PHC determination shall include findings on:

A) Whether adverse impacts may occur to the hydrologic balance;

B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground-water supplies;

C) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purposes; and

D) What impact the proposed operation will have on:

i) sediment yield from the disturbed area;

ii) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

iii) flooding or stream-flow alteration;

iv) ground-water and surface-water availability; and

v) other characteristics as required by the Department.

4) An application for permit revision shall be reviewed by the Department to determine whether a new or updated PHC determination shall be required.

g) Cumulative hydrologic impact assessment

1) The Department shall provide an assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. This assessment shall be sufficient for purposes of permit approval, to determine whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Department shall allow the submittal of data and analyses by the permittee in accordance with subsection (c).

2) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated assessment shall be required.

h) The application shall include a plan with maps and descriptions, indicating how the relevant requirements of 62 Ill. Adm. Code 1816.41 through 1816.43 will be met. The plan shall be specific to local hydrologic conditions. It shall contain steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet the applicable Federal and State water quality laws and regulations and to protect the rights of present water users. The plan shall include the measures to be taken to avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; control drainage; restore approximate premining recharge capacity and protect or replace rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in subsection (f) and shall include preventative and remedial measures.

i) Ground water monitoring plan

1) The application shall include a ground water monitoring plan based upon the determination of probable hydrologic consequences required under subsection (f) and the analyses of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved post-mining land uses and to the objectives for protection of the hydrologic balance set forth in subsection (h). It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation on the hydrologic

balance. At a minimum, the parameters to be monitored shall include pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese and water levels. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored. Data shall be submitted to the Department every three months for each monitoring location. The Department may require additional monitoring, such as increased parameters or frequency, if it is determined that the existing or proposed monitoring program is not designed to detect adverse impacts to the hydrologic balance.

2) If an applicant can demonstrate the proposed operation will not result in an adverse impact to the hydrologic balance, then the Department may waive the requirement for ground water monitoring. Such a waiver will not necessarily relieve the applicant from collecting the baseline ground water data required under subsection (b).

3) The Department may waive the requirement for ground water monitoring if it finds that the proposed operation will not proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purposes.

j) Surface water monitoring plan

1) The application shall include a surface water monitoring plan based upon the determination of probable hydrologic consequences required in subsection (f) and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved post-mining land uses, to the objectives for protection of the hydrologic balance set forth in subsection (h) and the effluent limitations in 40 CFR 434.

2) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

A) At all monitoring locations in the surface water bodies such as streams, lakes and impoundments, that are

potentially impacted or into which water will be discharged and at upstream monitoring locations pH, total dissolved solids, total suspended solids, alkalinity, acidity, sulfates, total iron, total manganese and flow shall be monitored. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all locations being monitored.

B) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR 122, 123 and 434 and as required by the Illinois Environmental Protection Agency (IEPA).

3) All surface water monitoring reports, including those required by the IEPA, shall be submitted to the Department every three (3) months. The Department shall require additional monitoring if it is determined that the existing or proposed monitoring plan is not adequate to detect adverse impacts to the hydrologic balance.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1780.31 Protection of Public Parks and Historic Places

a) For any publicly owned parks or ~~historic~~ any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used ~~to minimize or prevent these impacts and to obtain approval of the Department and other agencies as required in 62 Ill. Adm. Code 1761.12(f).~~

1) To prevent adverse impacts, or

2) If valid existing rights exist or joint agency approval is to be obtained under 62 Ill. Adm. Code 1761.12(e), to minimize adverse impacts.

b) The Department may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation. Appropriate mitigation and treatment measures for properties consisting of buried or surface deposits of archeological materials may include making the property

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available to any interested archeological investigators for study for a reasonable period of time, taking into account mining plans and the amount of materials present.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

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1) Heading of the Part: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

2) Code Citation: 62 Ill. Adm. Code 1783

3) Section Number: Proposed Action

1783.12	Amendment
1783.20	Repeal

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On June 9, 1987, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying Illinois rules concerning historic properties that must be amended in order to be no less effective than their Federal counterparts. Although the Department initiated rulemaking in a timely manner, the Department delayed promulgating final historic properties rules given the existence of litigation challenging the validity of the underlying Federal rules. By letter dated January 30, 1989, OSMRE advised the Department that the pending litigation concerning the Federal historic properties rules can no longer serve to delay the State rulemaking process.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

The following discussion describes the Department's proposed amendments to Part 1783 in response to these OSMRE directives:

Section 1783.12 sets forth the Department's requirements for general environmental resources information for underground coal mining permit applications. The proposed amendments to Section 1783.12 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 783.12, by permitting the Department to require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places through the collection of additional information, including conducting field investigations.

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Section 1783.20 sets forth the Department's requirements for fish and wildlife information for underground coal mining permit applications. The Department proposes to repeal this Section and to add its requirements to 62 Ill. Adm. Code 1784.21, as amended.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter

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will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1783
UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Section
1783.4 Responsibilities
1783.5 Use of Existing Data
1783.6 Use of Expert Opinion
1783.7 Seasonal Water Quality Data (Repealed)
1783.11 General Requirements
1783.12 General Environmental Resources Information
1783.13 Description of Hydrology and Geology: General Requirements (Repealed)
1783.14 Geology Description (Repealed)
1783.15 Ground Water Information (Repealed)
1783.16 Surface Water Information (Repealed)
1783.19 Vegetation Information
1783.20 Fish and Wildlife Resources Information (Repealed)
1783.21 Soil Resources Information
1783.22 Land Use Information
1783.24 Maps: General Requirements
1783.25 Cross-Sections, Maps, and Plans
1783.27 Prime Farmland Investigation (Repealed)

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4937; amended at 11 Ill. Reg. 8632, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1783.12 General Environmental Resources Information

Each application shall describe and identify:

a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

b)

1) The nature of cultural, archeological and historic resources listed or eligible for listing on the National Register of

all available information, including, but not limited to, data of State and local archaeological, historic, and cultural preservation agencies.

2) If the information provided pursuant to subsection (b)(1) is not adequate to enable the Department to make the finding required in 62 Ill. Adm. Code 1773.15(c)(12) because information provided to the Department indicates a substantial likelihood of currently unknown resources which would be eligible for the National Register of Historic Places within the proposed permit or adjacent areas, the Department shall require the applicant to submit additional information to enable the Department to identify and evaluate such resources. An applicant shall be required to conduct field investigations under this subsection as determined necessary by the Department.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1783.20 Fish and Wildlife Resources Information

~~a) Each application shall include a study of fish and wildlife and their habitats within the proposed mine plan area where surface operations will be conducted or facilities located and the portions of the adjacent areas where effects on such resources may be expected to occur.~~

~~b) Prior to initiating such studies, the applicant shall contact the Department to determine what fish and wildlife resources information will be required.~~

~~c) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:~~

~~1) Published data and other information;~~

~~2) Site specific information obtained by the applicant, and~~

~~3) Written guidance obtained from agencies consulted.~~

(Source: Repealed at __ Ill. Reg. _____, effective _____, 1990)

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Underground Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan

2) Code Citation: 62 Ill. Adm. Code 1784

3) Section Number: Proposed Action

1784.14	Amendment
1784.17	Amendment
1784.21	Amendment

4) Statutory Authority:

Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.); The Illinois Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.01 et seq.).

5) A Complete Description of the Subjects and Issues Involved:

On June 9, 1987, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying Illinois rules concerning historic properties that must be amended in order to be no less effective than their Federal counterparts. Although the Department initiated rulemaking in a timely manner, the Department delayed promulgating final historic properties rules given the existence of litigation challenging the validity of the underlying Federal rules. By letter dated January 30, 1989, OSMRE advised the Department that the pending litigation concerning the Federal historic properties rules can no longer serve to delay the State rulemaking process.

On October 25, 1988, OSMRE conditionally approved the Department's amendments to its permanent regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). See 53 Fed. Reg. 43112 (October 25, 1988). OSMRE's approval of Illinois' amendments to its regulatory program was conditioned upon the submittal of new amendments designed to correct defects identified in Illinois' rules.

On December 16, 1988, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under SMCRA and under Section 4.02 of the Illinois Administrative Procedure

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Act (IAPA). Ill. Rev. Stat. 1987, ch. 127, par. 1004.02.

The following discussion describes the Department's proposed amendments to Part 1784 in response to these OSMRE directives and agency concerns:

Section 1784.14 sets forth the Department's requirements for hydrologic information in underground coal mining permit applications. The Department's proposed amendments to Section 1784.14(a) serve to correct the address of the Department's Land Reclamation Division. The Department's proposed amendments to Section 1784.14(e) serve to make the Department's rules for the determination of probable hydrologic consequences consistent with the counterpart OSMRE regulation, 30 CFR 784.14(e). The Department's proposed amendments to subsection (h) serve to define when the Department may exercise its power to waive the ground water monitoring requirement, in accordance Section 4.02 of the IAPA. The Department's proposed amendment to subsection (i) serves to make this rule consistent with its surface mining counterpart and operates to bring the Department's requirements into compliance with Section 4.02 of the IAPA.

Section 1784.17 sets forth the Department's requirements for the protection of public parks and historic places applicable to underground coal mines. The proposed amendments to Section 1784.17 serve to make the Department's requirements consistent with the OSMRE counterpart regulation, 30 CFR 784.17, by requiring the applicant to prevent or minimize the impacts of proposed operations on privately-owned places listed on the National Register of Historic Places and by allowing the Department to specify appropriate mitigation and treatment measures for places listed and eligible for listing.

Section 1784.21 sets forth the Department's requirements for fish and wildlife plans in underground coal mining permit applications. The Department's proposed amendments to Section 1784.21 serve to make the Department's requirements consistent with the counterpart OSMRE regulation, 30 CFR 784.21.

6) Will this proposed rule replace an emergency rule currently in effect?

No.

7) Does this rulemaking contain an automatic repeal date? ___Yes _X_ No

If "Yes," please specify the date: _____

8) Does this proposed amendment contain incorporations by reference?

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No.

9) Are there any other proposed amendments pending on this Part?

No.

Section Numbers	Proposed Action	Illinois Register Citation

10) Statement of Statewide Policy Objectives:

The proposed requirements will have no impact on l al units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

John C. Henriksen, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson Street, Suite 300
P. O. Box 10137
Springfield, Illinois 62791-0137

Commentors must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues Involved. All comments are due at the above address no later than 5:00 p.m. on Monday, October 2, 1989. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Friday, September 1, 1989, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

This rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1784
UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section
1784.4 Responsibilities
1784.5 Use of Existing Data
1784.6 Use of Expert Opinion
1784.11 Operation Plan: General Requirements
1784.12 Operation Plan: Existing Structures
1784.13 Reclamation Plan: General Requirements
1784.14 Hydrologic Information
1784.15 Reclamation Plan: Post-mining Land Uses
1784.16 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
1784.17 Protection of Public Parks and Historic Places
1784.18 Relocation or Use of Public Roads
1784.19 Underground Development Waste
1784.20 Subsidence Control Plan
1784.21 Fish and Wildlife Plan
1784.22 Geologic Information
1784.23 Operation Plan: Maps and Plans
1784.24 Transportation Facilities
1784.25 Return of Coal Processing Waste to Abandoned Underground Workings
1784.26 Air Pollution Control Plan
1784.27 Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities
1784.29 Diversions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9350; amended at 11 Ill. Reg. 8652, effective July 1, 1987; amended at __ Ill. Reg. _____, effective _____, 1990.

Section 1784.14 Hydrologic Information

a) All water quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," (1980) which is incorporated by reference, or the methodology in 40 CFR 136 and 434. Water quality sampling performed to meet the requirements of this Section shall be conducted

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according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" (1980) is a joint publication of the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW., Washington D.C. 20036. This document is also available for inspection at the Land Reclamation Division, Department of Mines and Minerals, ~~227 South 7th Street, Rm. 201, Springfield, Ill.,~~ ~~62701~~ 300 West Jefferson Street, Suite 300, P.O. Box 10197, Springfield, Illinois 62791-0197.

b) The application shall contain the following baseline hydrologic information. When this information is insufficient for the Department to determine if adverse impacts may result to the hydrologic balance, additional information shall be required, such as but not limited to water supply contamination or diminution.

1) Ground water information.

The location and ownership for the permit and adjacent area of existing wells, springs, and other ground water resources, seasonal quality and quantity of ground water, and usage.

A) Ground water quality descriptions shall include, at a minimum, pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese and chlorides. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site- specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored.

B) Ground water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and elevation of the potentiometric surface in the coal to be mined, in each water-bearing stratum above the coal to be mined, and in each water-bearing stratum which may be potentially impacted below the coal to be mined.

2) Surface water information.

The name, location, ownership, and description of all surface water bodies, such as streams, lakes, and impoundments, the location of any discharge into any surface water body in the proposed permit and adjacent areas, and information on surface water quality and quantity sufficient to demonstrate seasonal variation and water usage.

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A) Water quality descriptions shall include, at a minimum, baseline information on pH, total suspended solids, total dissolved solids, alkalinity, acidity, sulfates, total iron, total manganese and chlorides. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all surface water points being monitored.

B) Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

3) If the determination of probable hydrologic consequences required by subsection (e) indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground or surface water supplies, then information supplemental to that required under subsections (1) and (2) shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information shall be based upon drilling, hydrogeologic analyses of water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

c) Baseline cumulative impact area information.

1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface and ground water systems as required by subsection (f) shall be provided to the Department, if available from appropriate Federal or State agencies.

2) If the information is not available from such agencies, then the applicant may gather and submit this information to the Department as part of the permit application.

3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the Department.

d) The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application if such techniques will enhance the evaluation of hydrological impacts, but actual surface and ground water information may be required by the Department for the purposes of calibration of such models for each

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site even when such techniques are used.

e) Determination of the probable hydrologic consequences (PHC).

1) The application shall contain a determination of the probable hydrologic consequences of the proposed operation on the proposed permit area, shadow area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the Department if such parameters are necessary to assure an accurate determination of probable hydrologic consequences on a site-specific basis.

2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

3) The PHC determination shall include findings on:

A) Whether adverse impacts may occur to the hydrologic balance;

B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies; and

C) What impact the proposed operation will have on:

i) sediment yield from the disturbed areas;

ii) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

iii) flooding or stream-flow alteration;

iv) ground-water and surface-water availability; and

v) other characteristics as required by the Department.

4) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated PHC determination shall be required.

f) Cumulative hydrologic impact assessment.

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1) The Department shall provide an assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. This assessment shall be sufficient for purposes of permit approval, to determine whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Department shall allow the submittal of data and analyses by the permittee in accordance with subsection (c).

2) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated assessment shall be required.

g) The application shall include a plan with maps and descriptions, indicating how the relevant requirements of 62 Ill. Adm. Code 1817, including 62 Ill. Adm. Code 1817.41 through 1817.43, will be met. The plan shall be specific to local hydrologic conditions. It shall contain steps to be taken during mining and reclamation, through bond release, to minimize disturbances to the hydrologic balance within the permit, shadow, and adjacent areas; to prevent material damage outside the permit area; to meet the applicable Federal and State water quality laws and regulations. The plan shall include the measures to be taken to avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; control drainage; restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in subsection (e) and shall include preventative and remedial measures.

h) Ground water monitoring plan.

1) The application shall include a ground water monitoring plan based upon the determination of probable hydrologic consequences required under subsection (e) and the analyses of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved post-mining land uses and to the objectives for protection of the hydrologic balance set forth in subsection (g). It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation on the hydrologic balance. At a minimum, the parameters to be monitored shall

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include pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese and water levels. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored. Data shall be submitted to the Department every three months for each monitoring location. The Department may require additional monitoring, such as increased parameters or frequency, if it is determined that the existing or proposed monitoring program is not designed to detect adverse impacts to the hydrologic balance.

2) If an applicant can demonstrate the proposed operation will not result in an adverse impact to the hydrologic balance, then the Department may waive the requirement for ground water monitoring. Such a waiver will not necessarily relieve the applicant from collecting the baseline ground water data required under subsection (b).

3) The Department may waive the requirement for ground water monitoring if it finds that the proposed operation will not proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purposes.

i) Surface water monitoring plan.

1) The application shall include a surface water monitoring plan based upon the determination of probable hydrologic consequences required in subsection (e) and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for monitoring of parameters that relate to the suitability of the surface water for current and approved post-mining land uses, to the objectives for protection of the hydrologic balance as set forth in subsection (g), and to the effluent limitations in 40 CFR 434.

2) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

A) At all monitoring locations in the surface water bodies such as streams, lakes and impoundments, that are

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potentially impacted or into which water will be discharged and at upstream monitoring locations, pH, total dissolved solids, total suspended solids, alkalinity, acidity, sulfates, total iron, total manganese and flow shall be monitored. The Department ~~may~~ shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all locations being monitored.

B) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR 122, 123 and 434 and as required by the Illinois Environmental Protection Agency (IEPA).

3) All surface water monitoring reports, including those required by the IEPA, shall be submitted to the Department every three (3) months. The Department shall require additional monitoring if it is determined that the existing or proposed monitoring plan is not adequate to detect adverse impacts to the hydrologic balance.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1784.17 Protection of Public Parks and Historic Places.

a) For any publicly owned parks or ~~historic~~ any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used ~~to minimize or prevent these impacts and to obtain approval of the Department and other agencies as required in 62 Ill. Adm. Code 1761.12(f).~~

1) To prevent adverse impacts, or

2) If valid existing rights exist or joint agency approval is to be obtained under 62 Ill. Adm. Code 1761.12(e), to minimize adverse impacts.

b) The Department may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operations. Appropriate mitigation and treatment measures for properties consisting of buried or surface deposits of archeological materials may include making the property

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available to any interested archeological investigators for study for a reasonable period of time, taking into account mining plans and the amount of materials present.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

Section 1784.21 Fish and Wildlife Plan

a) ~~Each application shall contain a fish and wildlife plan consistent with the performance standards of 62 Ill. Adm. Code 1817.97 and which provides:~~

Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

1) ~~A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the portions of the mine plan area and adjacent areas as determined by the Department pursuant to 62 Ill. Adm. Code 1783.20.~~

The scope and level of detail for such information shall be determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under subsection (b).

A) Prior to initiating such studies, the applicant shall contact the Department to determine, in accordance with subsection (B), what fish and wildlife resources information will be required.

B) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:

i) Published data and other information;

ii) Site-specific information obtained by the applicant; and

iii) Written guidance obtained from agencies consulted.

2) ~~If the applicant states that it will not be practicable, in accordance with subsection (a)(1), to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 62 Ill. Adm. Code 1817.111 through 1817.117, a statement shall be provided which establishes why it is not practicable to achieve such a condition.~~

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Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or those species or habitats protected by similar State statutes;

B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

C) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

b) ~~A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:~~

Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall --

1) ~~Threatened or endangered species of plants or animals listed by the Secretary of the United States Department of the Interior (Secretary) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) and their critical habitats;~~

Be consistent with the requirements of 62 Ill. Adm. Code 1817.97;

2) ~~Species such as eagles, migratory birds or other animals~~

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~~protected by State and Federal law, and their habitats; or other species identified through the consultation process pursuant to 62 Ill. Adm. Code 1783.20; or~~

Apply, at a minimum, to species and habitats identified under subsection (a); and

3) ~~Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.~~

Include—

A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

c) Fish and Wildlife Service review. Upon request, the Department shall provide the resource information required under subsection (a) and the protection and enhancement plan required under subsection (b) to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(Source: Amended at __ Ill. Reg. _____, effective _____, 1990)

POLLUTION CONTROL BOARD

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1) The Heading of the Part: Organic Material Emission Standards and Limitations

2) Code Citation: 35 Ill. Adm. Code 215

3) Section Number: 215.206 — Proposed Action: Amend

4) Statutory Authority: Implementing Section 10 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111½ pars. 1010 and 1027).

5) A Complete Description of the Subjects and Issues Involved: This matter is before the Board on a petition for a site-specific rulemaking filed July 19, 1988 by Roadmaster Corporation ("Roadmaster"). Roadmaster seeks relief from the Board's RACT II limitations on the maximum permissible volatile organic matter ("VOM") emissions from two flowcoater units at its manufacturing facility near Olney, in Robinson County, Illinois.

6) Will this proposed rule replace an emergency rule currently in effect? NO.

7) Does this rulemaking contain an automatic repeal date? X Yes ___ No
If "yes," please specify the date: January 1, 1995

8) Does this proposed amendment contain incorporations by reference? NO.

9) Are there any other amendments pending on this Part? NO.
Section Numbers: Proposed Action: Ill. Reg. Citation:

10) Statement of Statewide Policy Objective (if applicable)?
The Board believes that local governments are not required by the proposal to establish, expand or modify its activities so as to necessitate additional expenditures.