

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1774
REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT,
OR SALE OF PERMIT RIGHTS

Section

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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 11 Ill. Reg. 8469, effective July 1, 1987; amended at 14 Ill. Reg. 11900, effective January 1, 1991; amended at 15 Ill. Reg. 17284, effective January 1, 1992; amended at 17 Ill. Reg. 11083, effective July 1, 1993; amended at 20 Ill. Reg. 2118, effective January 19, 1996; amended at 22 Ill. Reg. 20280, effective November 5, 1998; amended at 43 Ill. Reg. 12909, effective October 16, 2019.

Section 1774.1 Scope and Purpose

This Part provides requirements for revision; renewal; and transfer, assignment and sale of permit rights.

Section 1774.11 Department Review of Permits

- a) The Illinois Department of Natural Resources (Department) shall review each permit issued and outstanding under the regulatory program during the term of the permit. This review shall occur not later than the middle of each permit term and as follows:
 - 1) Permits with a term longer than five years shall be reviewed no less frequently than the permit midterm or every five years, whichever is more frequent.
 - 2) Permits with variances granted in accordance with 62 Ill. Adm. Code 1785.14 (mountaintop removal) and 62 Ill. Adm. Code 1785.18 (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) shall be reviewed no later than three years from the date of issuance of the permit unless, for

variances issued in accordance with 62 Ill. Adm. Code 1785.14, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit.

- 3) Permits containing experimental practices issued in accordance with 62 Ill. Adm. Code 1785.13 and permits with a variance from approximate original contour requirements in accordance with 62 Ill. Adm. Code 1785.16 shall be reviewed as set forth in the permit or at least every 2½ years from the date of issuance as required by the Department, in accordance with 62 Ill. Adm. Code 1785.13(g) and 1785.16(c), respectively.
- b) After the review required by subsection (a) above, or at any time, the Department may, by order, require revision of a permit in accordance with Section 1774.13 to ensure compliance with the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (federal Act) and the regulatory program.
- c) Any order of the Department requiring revision of a permit shall be based upon written findings and shall be subject to the provisions for administrative and judicial review in 62 Ill. Adm. Code 1847.3. Copies of the order shall be sent to the permittee within five working days after issuance.
- d) Permits may be suspended or revoked in accordance with 62 Ill. Adm. Code 1840 through 1845.

(Source: Amended at 22 Ill. Reg. 20280, effective November 5, 1998)

Section 1774.13 Permit Revisions

- a) During the term of a permit, the permittee may submit an application to the Department for a revision of the permit. The application may be made on the standard Department permit form; however, only those sections of the form that pertain to the revision in question must be completed.
- b) Application Requirements and Procedures
 - 1) The Department will approve or disapprove applications for insignificant revisions within 90 days after receipt of the application. Applications for significant revision will be acted upon in accordance with 62 Ill. Adm. Code 1773.13 and 1773.15.
 - 2) A significant revision to a permit shall be obtained for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when the changes

constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. For purpose of these requirements, significant departures from the methods or conduct of mining or reclamation operations include any change in the mining or reclamation operations, except the following, if not contemplated or provided for in the original permit:

- A) For surface mines, changes of direction of mining or location of mining equipment within the permit area;
- B) Substitution of mining equipment designed for the same purpose, the use of which is not detrimental to achievement of final reclamation or subsidence control;
- C) For underground mines, any change in direction or location of mining within the permit area or shadow area, in response to unanticipated events;
- D) Any other change in operations, methods or conduct of mining described in writing to the Department that the Department excuses in writing from requirement of revision on a case-by-case basis after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or subsidence control plans or upon the surrounding area;
- E) Any alteration in the reclamation plan or reclamation operations which does not involve significant delay or significant change in land use described in writing to the Department and excused from this requirement of revision on a case-by-case basis. Alternative land use proposals shall comply with 62 Ill. Adm. Code 1816.133 or 1817.133, and shall be approved only after consultation with the landowner or the land management agency with jurisdiction over the lands. If applicable, alternative land use proposals shall comply with 62 Ill. Adm. Code 1785.17(e)(5). A significant revision shall be required for a land use change to any of the following, as defined in 62 Ill. Adm. Code 1701.Appendix A:
 - i) "Residential";
 - ii) "Industrial/commercial";
 - iii) "Recreation"; or

- iv) "Developed water resources" that meet the size criteria of 30 CFR 77.216(a);
 - F) Any temporary change in operations, subsidence control or reclamation plans necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee, after review and approval by the Department in writing, provided that all steps specified by the Department to maximize environmental protection are taken.
- 3) All significant permit revision applications shall meet the requirements of 62 Ill. Adm. Code 1773.13, 1773.19(a)(3)(A) and (C), and 1778.21.
- c) No application for a permit revision shall be approved unless the application demonstrates and the Department finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 62 Ill. Adm. Code 1773.15(c) that are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.
- d) Extensions of the permit area, except for incidental boundary revisions, shall be made by application for a new permit, and shall not be approved under this Part. Extensions of the shadow area, except for incidental boundary revisions, shall be made and approved pursuant to the requirements of this Part. Application for incidental boundary revisions shall be made pursuant to subsection (a). Incidental boundary revisions are those that:
 - 1) Constitute a relatively small percentage of the initial permit acreage;
 - 2) Are contiguous with the permit or shadow area acreage, except that isolated long-term support facilities associated with underground mining activities need not be contiguous provided those facilities do not include coal preparation or coal waste disposal areas. Non-contiguous incidental boundary revisions shall be subject to the performance standards of 62 Ill. Adm. Code 1817.182;
 - 3) Are required for the orderly and continuous mining operation;
 - 4) Would be reclaimed in conformity with the initial plan, except when provided under subsection (d)(2);
 - 5) For the purpose of this Section, incidental boundary changes are described as follows:

| Original Permit Acres | Maximum Size of Boundary Changes Acres |
|--------------------------|---|
| Up to 10 | 1 |
| Up to 25 | 2.5 |
| Up to 50 | 5 |
| Up to 75 | 7.5 |
| Up to 100 | 10 |
| Over 100 | 20 |

The maximum size for acreage additions to approved non-contiguous incidental boundary revision areas, as described in subsection (d)(2), shall be based upon the original boundary revision acreage, not the original permit acreage;

- 6) Notice of an incidental boundary revision application shall be published in a local newspaper in the area of the proposed activities. The notice shall describe the general area of the proposed activities and shall state the name and business address of the permittee, the address of the Department at which written comments on the application may be submitted, and the closing date of the comment period. In no case shall the public comment period be less than seven days. In order to process the incidental boundary revision application, proof of that publication must be submitted to the Department. The notice requirements of this subsection (d)(6) shall not apply to unplanned subsidence areas.
- e) A determination as to what constitutes a significant departure shall be made by the Department in consultation with the permittee. Changes that do not alter the final reclamation or mining plan are considered minor and do not require permit revision. However, any request for the changes shall be included in a written request to the Department.

(Source: Amended at 43 Ill. Reg. 12909, effective October 16, 2019)

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;
 - 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(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 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 1847.3.

(Source: Amended at 17 Ill. Reg. 11083, effective July 1, 1993)

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
 - 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 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 14 Ill. Reg. 11900, effective January 1, 1991)