

TITLE 62: MINING
 CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1778
 PERMIT APPLICATIONS – MINIMUM REQUIREMENTS
 FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Section

1778.4 Responsibility (Repealed)

1778.9 Certifying and Updating Existing Permit Application Information

1778.11 Applicability (Repealed)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1778.20 Identification of Location of Public Office for Filing of Application (Repealed)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 [225 ILCS 720].

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 14 Ill. Reg. 11873, effective January 1, 1991; amended at 15 Ill. Reg. 17265, effective January 1, 1992; amended at 17 Ill. Reg. 11027, effective July 1, 1993; amended at 20 Ill. Reg. 2080, effective January 19, 1996; amended at 22 Ill. Reg. 20260, effective November 5, 1998; amended at 26 Ill. Reg. 4267, effective March 6, 2002; amended at 27 Ill. Reg. 4668, effective February 26, 2003; amended at 43 Ill. Reg. 12916, effective October 16, 2019.

Section 1778.9 Certifying and Updating Existing Permit Application Information

- a) If the applicant has previously applied for a permit and the required information is already in the Applicant Violator System (AVS), then the applicant may update the information as shown in the following table.

If:	Then:
All or part of the information already in AVS is accurate and complete:	May certify to DNR by swearing or affirming, under oath and in writing, that the relevant information in AVS is

	accurate, complete and up to date.
Part of the information in AVS is missing or incorrect:	Must submit to DNR the necessary information or corrections and swear or affirm, under oath and in writing, that the information submitted is accurate and complete.
The applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections:	Must include in the applicant's permit application the information required under this Part.

- b) The applicant must swear or affirm, under oath and in writing, that all information provided by the applicant in the application is accurate and complete.
- c) The Department may establish a central file to house the applicant's identity information, rather than place duplicate information in each of the applicant's permit application files. The Department will make the information available to the public upon request.
- d) After the Department approves an application, but before issuing a permit, the applicant shall update, correct or indicate that no change has occurred in the information previously submitted under this subsection and Sections 1778.13 and 1778.14.

(Source: Added at 43 Ill. Reg. 12916, effective October 16, 2019)

Section 1778.13 Identification of Interests

- a) The applicant shall provide in the permit application:
 - 1) A statement whether it and the operator are corporations, partnerships, sole proprietorships or other business entities; and
 - 2) taxpayer identification numbers for it and the operator.
- b) The applicant must provide the name, address and telephone number for:
 - 1) the applicant;
 - 2) the applicant's resident agent who will accept service of process;

- 3) any operator, if different from the applicant;
 - 4) each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For every such business entity, the applicant must also provide the required information for every president, chief executive officer and director (or person in similar positions), and every person who owns, of record, 10 percent or more of the entity.
- c) For the applicant and the operator, the applicant must provide the information required in subsection (d) for every:
- 1) officer;
 - 2) partner;
 - 3) member;
 - 4) director;
 - 5) person performing a function similar to a director; and
 - 6) person who owns, of record, 10 percent or more of the applicant or operator.
- d) The applicant must provide the following information for each person listed in subsection (c):
- 1) the person's name, address and telephone number;
 - 2) the person's position title and relationship to the applicant, including percentage of ownership and location in the organizational structure; and
 - 3) the date the person began functioning in that position.
- e) The Department need not make a finding before entering into AVS the information required to be disclosed under this Section; however, the mere listing in AVS of a person identified in subsection (b) or (c) does not create a presumption or constitute a determination that the person owns or controls a surface coal mining operation.
- f) The applicant must provide a list of all names under which it, the operator, the partners or principal shareholders, and the operator's partners or principal shareholders, operate or previously operated a surface coal mining operation in

the United States within the five-year period preceding the date of submission of the application.

- g) For the applicant and the operator, the applicant must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.
- h) For any surface coal mining operations the applicant or the operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation the applicant or the operator own or control on that date, the applicant must provide:
 - 1) permittee's and operator's name and address;
 - 2) permittee's and operator's taxpayer identification numbers;
 - 3) federal or State permit number and corresponding Mine Safety and Health Administration (MSHA) number;
 - 4) regulatory authority with jurisdiction over the permit; and
 - 5) permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.
- i) The MSHA numbers for all mine-associated structures that require MSHA approval (see 30 CFR 77).
- j) 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). Information submitted as a change shall be evaluated in the same manner as the original application.
- k) The applicant shall submit, in its application, and at other times at the request of the Department or the federal Office of Surface Mining Reclamation and Enforcement, the information and documentation required by this Section and Sections 1778.14 and 1778.15.

(Source: Amended at 43 Ill. Reg. 12916, effective October 16, 2019)

Section 1778.14 Violation Information

- a) The applicant must state in the permit application whether it, the operator or any

subsidiary, affiliate or entity that it or the operator owns or controls, or that is under common control with the applicant or the operator, has:

- 1) had a federal or State permit for surface coal mining suspended or revoked during the five-year period preceding the date of submission of the application; or
 - 2) forfeited a performance bond, or similar security deposited in lieu of bond, in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.
- b) For each suspension, revocation or forfeiture identified under subsection (a), the applicant must provide a brief explanation of the facts involved, including the:
- 1) permit number;
 - 2) date of suspension, revocation or forfeiture and, when applicable, the amount of bond or similar security forfeited;
 - 3) regulatory authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;
 - 4) the current status of the permit, bond or similar security involved; and
 - 5) the date, location, type and current status of any administrative or judicial proceedings concerning the suspension, revocation or forfeiture.
- c) A list of all violation notices the applicant or the operator received for any surface coal mining and reclamation operation during the three-year period preceding the date of submission of the application. In addition, the applicant must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or the operator own or control on that date. For each violation notice reported, the applicant shall include the following information as applicable:
- 1) the permit number and associated MSHA number;
 - 2) the issue date, identification number and current status of the violation notice;
 - 3) the name of the person to whom the violation notice was issued;
 - 4) the name of the regulatory authority or agency that issued the violation notice;

- 5) a brief description of the violation alleged in the notice;
 - 6) the date, location, type and current status of any administrative or judicial proceedings concerning the violation notice;
 - 7) if the abatement period for a violation in a notice of violation issued under 62 Ill. Adm. Code 1843.12 has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation; and
 - 8) for all violations not covered by subsection (c)(7), the actions taken to abate or correct the violation.
- d) An application shall contain information about the applicant's present financial condition that 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 this Section. Information submitted as a change shall be evaluated in the same manner as the original application.

(Source: Amended at 43 Ill. Reg. 12916, effective October 16, 2019)

Section 1778.15 Right of Entry Information

- a) An application shall contain:
- 1) 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;
 - 2) the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;
 - 3) 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 in this Section that is not on public file pursuant to State law shall be held in confidence by the Department, as provided in 62 Ill. Adm. Code 1773.13(d)(3)(B); and

- 4) the Mine Safety and Health Administration (MSHA) numbers for all structures that require MSHA approval.
- b) An application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant. The Department will not be liable in any way if the claimed right to enter and begin surface mining activities has been, or is later, adjudicated invalid by a court of competent jurisdiction. Documents shall not be submitted to the Department in lieu of the description identified in this subsection; however, the Department may subsequently require the applicant to provide such information during the permitting process.
 - c) For surface mining activities where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area:
 - 1) a copy of the written consent of the surface owner to the extraction of coal by surface mining methods;
 - 2) a copy of the conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
 - 3) if the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under the applicable State law, the applicant has the legal authority to extract the coal by those methods.
 - d) Nothing in this Section shall be construed to afford the Department the authority to adjudicate property title disputes.
 - e) In satisfaction of the requirements of this Section the Department may accept, as part of a permit application, a statement, notarized and attested to the truth of the statement, signed by an attorney licensed to practice law in the State of Illinois, the applicant has the legal right to enter and commence the surface coal mining and reclamation operations proposed in the application. The statement shall identify the documents upon which it is based by type and date of execution, identify the specific lands to which each document pertains, and explain the legal rights claimed by the applicant. If subsection (c) applies, the statement shall also include copies of the documents as required in subsections (c)(1) through (3).

- f) An application in which the applicant claims to have valid existing rights to conduct surface coal mining operations in an area where mining is prohibited or limited under 62 Ill. Adm. Code 1761.11 shall contain the necessary information and meet the requirements of Section 1778.16 and the applicable portions of 62 Ill. Adm. Code 1761.14 through 1761.17.
- g) All applications for shadow area shall contain a notarized statement by a responsible official of the applicant attesting that all necessary mining rights, including the right to subside, if applicable, have been or will be obtained prior to mining.

(Source: Amended at 43 Ill. Reg. 12916, effective October 16, 2019)

Section 1778.16 Relationship to Areas Designated Unsuitable for Mining

- a) An application shall contain a statement of available information on whether the proposed permit and shadow areas are within an area designated unsuitable for surface coal mining and reclamation operations or under study for designation in an administrative proceeding under 62 Ill. Adm. Code 1762 and 1764.
- b) If an applicant claims the exemption in 62 Ill. Adm. Code 1762.13(c), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.
- c) An application in which the applicant proposes to conduct surface coal mining operations within 300 feet of an occupied dwelling or within 100 feet of a public road must meet the requirements of 62 Ill. Adm. Code 1761.15 or 1761.14, respectively.

(Source: Amended at 27 Ill. Reg. 4668, effective February 26, 2003)

Section 1778.17 Permit Term

- a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining and over the life of the mine.
- b) If the applicant requires an initial permit term in excess of five (5) years in order to obtain necessary financing for equipment and the opening of the operation, the application shall:

- 1) Be complete and accurate covering the specified longer term; and
- 2) Show that the proposed longer term is needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

(Source: Amended at 11 Ill. Reg. 8368, effective July 1, 1987)

Section 1778.18 Insurance

An application shall contain a certificate of liability insurance issued in compliance with 62 Ill. Adm. Code 1800.60.

(Source: Amended at 11 Ill. Reg. 8368, effective July 1, 1987)

Section 1778.21 Proof of Publication

A copy of the newspaper advertisement of the application for a permit, significant revision of a permit or renewal of a permit and proof of publication of the advertisement shall be filed with the Department and made a part of the complete application, not later than four (4) weeks after the last date of publication required under 62 Ill. Adm. Code 1773.13(a)(1).

(Source: Amended at 11 Ill. Reg. 8368, effective July 1, 1987)

Section 1778.22 Facilities or Structures Used in Common

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one (1) permit application and referenced in the other applications. In accordance with 62 Ill. Adm. Code 1800, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall be approved by the Department if it demonstrates that all responsibilities under the regulatory program for the facility or structure will be met.

(Source: Added at 11 Ill. Reg. 8368, effective July 1, 1987)