

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1840
DEPARTMENT INSPECTIONS

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 4 Ill. Reg. 37, p. 1, effective June 1, 1982; codified at 8 Ill. Reg. 12288; amended at 11 Ill. Reg. 8036, effective July 1, 1987; amended at 20 Ill. Reg. 1949, effective January 19, 1996, amended at 22 Ill. Reg. 20163, effective November 5, 1998; amended at 24 Ill. Reg. 5905, effective March 21, 2000.

Section 1840.1 Scope

This Part sets forth the Illinois Department of Natural Resources' (Department) monitoring, reporting, inspection, and enforcement regulations for surface coal mining and reclamation operations, for coal exploration operations which substantially disturb the natural land surface and for applicants for permits under the Surface Coal Mining Land Conservation and Reclamation Act (State Act).

(Source: Amended at 22 Ill. Reg. 20163, effective November 5, 1998)

Section 1840.2 Monitoring and Reporting

Whenever the Department has reason to believe that compliance with 62 Ill. Adm. Code 1700 - 1850 or any requirement of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (Federal Act) is not being achieved, the Department shall by written notice require a permittee to:

- a) Establish and maintain specific records relating to any requirement of 62 Ill. Adm. Code 1700 - 1850;

- b) Install, use, and maintain specific monitoring equipment relating to any requirement of 62 Ill. Adm. Code 1700 - 1850;
- c) Make monthly or more frequent reports relating to any requirement of 62 Ill. Adm. Code 1700 - 1850;
- d) Provide evaluations of results of monitoring and reports relating to any requirement of 62 Ill. Adm. Code 1700 - 1850; or
- e) Provide other information, as the Department finds necessary to the performance of its duties specified in 62 Ill. Adm. Code 1700 - 1850.

(Source: Amended at 11 Ill. Reg. 8036, effective July 1, 1987)

Section 1840.11 Inspections by the Department

- a) The Department shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction and shall conduct partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction to ensure enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with any of the permit conditions and requirements imposed under the Federal Act, State Act and 62 Ill. Adm. Code 1700 through 1850. The inspector shall collect evidence of any violation of the Federal Act, the State Act or 62 Ill. Adm. Code 1700 through 1850 observed.
- b) The Department shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the Federal Act, the State Act and 62 Ill. Adm. Code 1700 through 1850 within the entire area disturbed, impacted or affected by surface coal mining and reclamation operations. The inspector shall collect evidence of any violation of the Federal Act, State Act or 62 Ill. Adm. Code 1700 through 1850 observed.
- c) The Department shall conduct periodic inspections of all coal exploration operations required to comply with the Federal Act, the State Act, and 62 Ill. Adm. Code 1700 through 1850. The inspector shall collect evidence of any violation of the Federal Act, State Act, or 62 Ill. Adm. Code 1700 through 1850 observed.
- d) Aerial inspections.

- 1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.
 - 2) Any potential violation observed during an aerial inspection shall be investigated on site within three days; provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under 62 Ill. Adm. Code 1843.11 shall be investigated on site immediately. An on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of subsections (a) and (b) of this Section.
- e) The inspections required under subsections (a), (b), (c) and (d) of this Section shall:
- 1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;
 - 2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and
 - 3) Include the prompt filing of inspection reports adequate to enforce the requirements of the Federal Act, State Act, and 62 Ill. Adm. Code 1700 through 1850.
- f) For the purposes of Section 1840.11, an inactive surface coal mining and reclamation operation is one for which:
- 1) The Department has secured from the permittee the written notice provided for under 62 Ill. Adm. Code 1816.131(b) or 1817.131(b); or
 - 2) Reclamation Phase II as defined at 62 Ill. Adm. Code 1800.40 has been completed and the liability of the permittee has been reduced by the Department in accordance with the State program.
- g) Abandoned site means a surface coal mining and reclamation operation for which the Department has found in writing that:
- 1) All surface and underground coal mining and reclamation activities at the site have ceased;
 - 2) The Department has issued at least one notice of violation or the initial program equivalent, and either:

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- A) Is unable to serve the notice despite diligent efforts to do so; or
 - B) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;
- 3) The Department:
- A) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and
 - B) Is taking action pursuant to Section 8.04(e), 8.04(f), 8.06(d) or 8.08 of the State Act [225 ILCS 720/8.04(e), 8.04(f), 8.06(d), 8.08] to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and
- 4) Where the site is, or was, permitted and bonded:
- A) The permit has either expired or been revoked; and
 - B) The Department has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.
- h) In lieu of the inspection frequency established in subsections (a) and (b) of this Section, the Department shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.
- 1) In selecting an alternate inspection frequency authorized under this subsection, the Department shall first conduct a complete inspection of the abandoned site and provide public notice under subsection (h)(2) below. Following the inspection and public notice and the opportunity to comment, the Department shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

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- A) How the site meets each of the criteria under the definition of an abandoned site under subsection (g) above and thereby qualifies for a reduction in inspection frequency;
 - B) Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harm to land, air or water resources;
 - C) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;
 - D) The degree to which erosion and sediment control is present and functioning;
 - E) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;
 - F) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and
 - G) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.
- 2) The public notice and opportunity to comment required under subsection (h)(1) above shall be provided as follows:
 - A) The Department shall place a notice in a local newspaper of general circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.
 - B) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone

number and address of the Department where written comments on the reduced inspection frequency may be submitted and the closing date of the comment period.

(Source: Amended at 22 Ill. Reg. 20163, effective November 5, 1998)

Section 1840.12 Right of Entry

- a) Within its jurisdiction, the Department has statutory authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice or search warrant, upon presentation of appropriate credentials.
- b) The Department has statutory authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the Federal Act, the State Act, 62 Ill. Adm. Code 1700 - 1850, the exploration approval or the permit. This statutory authority provides for representatives to exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that the Department may provide for its use with respect to entry into a building except as otherwise provided by law.
- c) Authorized representatives of the Department, without advance notice and on presentation of credentials issued by the Department:
 - 1) May enter any surface coal mining and reclamation operations or any premises in which any records the Department has required be maintained are located; and
 - 2) May at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under the Federal Act, State Act, 62 Ill. Adm. Code 1700 - 1850 or any coal exploration approval or permit issued under the State Act.

(Source: Amended at 11 Ill. Reg. 8036, effective July 1, 1987)

Section 1840.14 Availability of Records

- a) The Department shall make available to the Office of Surface Mining Reclamation and Enforcement (OSMRE), upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operation permits and all documents relating to inspection and enforcement actions.

- b) Copies of all records, reports, inspection materials, or information obtained by the Department shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except:
 - 1) As otherwise provided by the Freedom of Information Act [5 ILCS 140]; and
 - 2) For information not required to be made available under 62 Ill. Adm. Code 1772.15 and 1773.13(d) or subsection (d) of this Section.
- c) The Department shall ensure compliance with subsection (b) by either:
 - 1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or proposed to occur; or
 - 2) At the Department's option and expense, if the document is ten pages or less in length, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or proposed to occur; however, the Department shall maintain for public inspection, at a Federal, State or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.
- d) In order to protect preparation for hearings and enforcement proceedings, the Department may enter into agreements with the Director of the OSMRE regarding procedures for the special handling of investigative and enforcement reports and other such materials, which may limit or refuse availability of investigatory records compiled for law enforcement purposes.

(Source: Amended at 24 Ill. Reg. 5905, effective March 21, 2000)

Section 1840.15 Citizens' Request for State Inspections

- a) A person may request a State inspection under Section 8.06(a) of the State Act, by furnishing to the Department a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative of the Department reason to believe that a violation, condition, or practice of any requirement of the State Act or any permit condition required by the State Act

exists and setting forth a phone number and address where the citizen can be contacted.

- b) The identity of any person supplying information to the Department relating to a possible violation or imminent danger or harm shall remain confidential with the Department if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under State law.
- c) If a State inspection is conducted as a result of information provided by a citizen as described in subsection (a), the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Department during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.
- d) Within ten (10) days of the State inspection or, if there is no inspection, within fifteen (15) days of receipt of the citizen's written statement, the Department shall send the citizen the following:
 - 1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the State inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;
 - 2) If no State inspection was conducted, an explanation of the reason why; and
 - 3) An explanation of the citizen's right, if any, to informal review of the action or inaction of the Department under Section 1840.17.
- e) The Department shall give copies of all materials in subsections (d)(1) and (2) within the time limits specified in those subsections to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under subsection (b).

(Source: Amended at 11 Ill. Reg. 8036, effective July 1, 1987)

Section 1840.16 Review of Adequacy and Completeness of Inspections

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Department in writing of any alleged failure on the part of the Department to make adequate State inspections as provided in Section 1840.11. The notification shall include sufficient information to create a reasonable belief that Section 1840.11 is not being complied with and to demonstrate that the person is or may be adversely affected. The Department shall within fifteen (15) days of receipt of the notification determine whether Section 1840.11 is being complied with, and if not, shall immediately order a State inspection to remedy the noncompliance. The Department shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

(Source: Amended at 11 Ill. Reg. 8036, effective July 1, 1987)

Section 1840.17 Review of Decision Not to Inspect or Enforce

- a) Any person who is or may be adversely affected by a coal exploration operation or surface coal mining and reclamation operation may ask the Director or his or her designee to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under Section 1840.15. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review. The request for review must be submitted within thirty (30) days from the date the citizen is notified of the authorized representative's decision. Failure to file a request for informal review within this thirty (30) day time period shall result in a waiver of the right to such review.
- b) The Director or his or her designee shall conduct the review and inform the person, in writing, of the results of the review within thirty (30) days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under State law.
- c) Informal review under this Section shall not affect any right to formal review under 62 Ill. Adm. Code 1847.3 or to a citizen's suit under Section 8.05 of the State Act [225 ILCS 720/8.05].

(Source: Amended at 20 Ill. Reg. 1949, effective January 19, 1996)