ARTICLE 25. COAL MINING AND RECLAMATION OPERATIONS

Rule 1. Definitions

312 IAC 25-1-1 Applicability
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 1. Unless otherwise specified, the definitions contained in this rule apply throughout this article. *(Natural Resources Commission; 312 IAC 25-1-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001)*

312 IAC 25-1-2 "A horizon" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 2. "A horizon" means the uppermost mineral layer and is the part of the soil in which the organic matter is most abundant and where the leaching of soluble or suspended particles is typically the greatest. *(Natural Resources Commission; 312 IAC 25-1-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001)*

312 IAC 25-1-3 "Acid-drainage" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 3. "Acid-drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned surface coal mine and reclamation operation. *(Natural Resources Commission; 312 IAC 25-1-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001)*

312 IAC 25-1-4 "Acid-forming materials" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 4. "Acid-forming materials" means earth materials that contain sulfide minerals or other materials that, if exposed to air, water, or weathering processes, form acids that may create acid drainage. *(Natural Resources Commission; 312 IAC 25-1-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001)*

312 IAC 25-1-5 "Act" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 5. "Act" means IC 14-34. *(Natural Resources Commission; 312 IAC 25-1-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001)*

312 IAC 25-1-6 "Adjacent area" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 6. "Adjacent area" means land located outside the affected area, or permit area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation, or other resources protected by IC 14-34 may be adversely impacted by surface coal mining and reclamation operations. *(Natural Resources Commission; 312 IAC 25-1-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001)*

312 IAC 25-1-7 "Administratively complete application" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 7. "Administratively complete application" means an application for permit approval, or approval for coal exploration where required, or approval for an exemption for coal extraction incidental to the extraction of other minerals, which the director determines to contain information addressing each application requirement of this article and to contain all information necessary to initiate processing and public review. *(Natural Resources Commission; 312 IAC 25-1-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001)*

312 IAC 25-1-8 "Affected area" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 8. (a) "Affected area" means any land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The term includes any of the following:

(1) The disturbed area.
(2) Any area upon which surface coal mining and reclamation operations are conducted.
(3) Any adjacent land the use of which is incidental to surface coal mining and reclamation operations.
(4) Any area covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this section.
(5) Any area covered by:
(A) surface excavations;
(B) workings;
(C) impoundments;
(D) dams;
(E) ventilation shafts;
(F) entryways;
(G) refuse banks;
(H) dumps;
(I) stockpiles;
(J) overburden piles;
(K) spoil banks;
(L) culm banks;
(M) tailings;
(N) holes or depressions;
(O) repair areas;
(P) storage areas; or
(Q) shipping areas.
(6) Any area upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations.
(7) The area located above underground workings.

(b) The term includes every road used for purposes of access to, or for hauling coal to or from, any surface coal mining and reclamation operation unless:

(1) the road is designated as a public road pursuant to the laws of the jurisdiction in which it is located;
(2) the road is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction;
(3) there is substantial (more than incidental) public use; and
(4) the extent and the effect of mining-related uses of the road by the permittee do not warrant regulation as part of the surface coal mining and reclamation operations.

(c) The director shall determine, on a case-by-case basis, whether a particular road satisfies the requirements of subsection

(b)(4) based upon the mining-related use of the road and consistent with the definition of surface coal mining operation found in section 145 of this rule. *(Natural Resources Commission; 312 IAC 25-1-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2444, eff Jan 1, 2005)*

312 IAC 25-1-9 "Agricultural use" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 9. "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. *(Natural Resources Commission; 312 IAC 25-1-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001)*

312 IAC 25-1-10 "Applicant" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 10. "Applicant" means any person seeking a permit or exploration approval from the director to conduct surface coal mining and reclamation operations pursuant to IC 14-34, this article, and this regulatory program. *(Natural Resources Commission; 312 IAC 25-1-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001)*

312 IAC 25-1-11 "Application" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 11. "Application" means the documents and other information filed with the director for issuance of a permit or exploration approval. *(Natural Resources Commission; 312 IAC 25-1-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001)*

312 IAC 25-1-12 "Approximate original contour" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12. "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area 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, spoil piles, and coal refuse piles eliminated. Permanent water impoundments may be permitted where the director has determined that they comply with the performance standards of this article. *(Natural Resources Commission; 312 IAC 25-1-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001)*

312 IAC 25-1-13 "Aquifer" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 13. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specified use. *(Natural Resources Commission; 312 IAC 25-1-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001)*

312 IAC 25-1-14 "Auger mining" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 14. "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface. *(Natural Resources Commission; 312 IAC 25-1-14; filed Jun*

21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001)

312 IAC 25-1-15 "Augmented seeding, fertilization, or irrigation" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 15. "Augmented seeding, fertilization, or irrigation" means seeding, fertilizing, or irrigating in excess of normal agronomic practices within the region. *(Natural Resources Commission; 312 IAC 25-1-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001)*

312 IAC 25-1-16 "B horizon" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 16. "B horizon" means the mineral layer that is typically immediately beneath the A horizon. The B horizon commonly contains more clay, iron, or aluminum than the A horizon or the C horizon. *(Natural Resources Commission; 312 IAC 25-1-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001)*

312 IAC 25-1-17 "Best technology currently available" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 17. (a) "Best technology currently available" means equipment, devices, systems, methods, or techniques that will:
(1) prevent, to the extent possible, additional contributions of suspended solids to stream flow or run-off outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable Indiana or federal laws; and
(2) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and their habitats and achieve enhancement of those resources where practicable.
(b) Included within best technology currently available are equipment, devices, systems, methods, or techniques that are currently available anywhere as determined by the director even if not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, scheduling of activities, and design of siltation structures. The director shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by IC 14-34 and this article. *(Natural Resources Commission; 312 IAC 25-1-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001)*

312 IAC 25-1-18 "Box cut spoil" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 18. "Box cut spoil" means the spoil created from the initial excavation of a pit or pits that is placed upon the surface of adjacent lands. The term does not include spoil from subsequent excavations that is placed in previously excavated pits. *(Natural Resources Commission; 312 IAC 25-1-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001)*

312 IAC 25-1-19 "C horizon" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 19. "C horizon" means the deepest layer of the soil profile and consists of loose material or weathered rock that is relatively unaffected by biologic activity. *(Natural Resources Commission; 312 IAC 25-1-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001)*

312 IAC 25-1-20 "Cemetery" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 20. "Cemetery" means any area of land where human remains are interred. *(Natural Resources Commission; 312 IAC 25-1-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001)*

312 IAC 25-1-21 "Certified blaster" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 21. "Certified blaster" means a person who has the following qualifications:
(1) Has twelve (12) months or more experience in blasting operations under the immediate supervision of an experienced blaster.
(2) Has completed an approved training course in blasting technology.
(3) Has successfully passed the blaster certification examination.
(4) Holds a valid certificate issued by the director.
(Natural Resources Commission; 312 IAC 25-1-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001)

312 IAC 25-1-22 "Coal" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 22. "Coal" means combustible carbonaceous rock classified as bituminous or subbituminous by ASTM Standard D 388-77. *(Natural Resources Commission; 312 IAC 25-1-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001)*

312 IAC 25-1-23 "Coal exploration" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 23. "Coal exploration" means the field gathering of:
(1) surface or subsurface geologic, physical, or chemical data by trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or
(2) environmental data to establish the condition of an area before beginning surface coal mining and reclamation operations under the requirements of this article.
(Natural Resources Commission; 312 IAC 25-1-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001)

312 IAC 25-1-24 "Coal mine waste" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 24. "Coal mine waste" means coal processing waste and underground development waste. *(Natural Resources Commission; 312 IAC 25-1-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001)*

312 IAC 25-1-25 "Coal preparation" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 25. "Coal preparation" means leaching, chemical processing, physical processing, cleaning, concentrating, or any other method for processing or preparing coal. *(Natural Resources Commission; 312 IAC 25-1-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001)*

312 IAC 25-1-26 "Coal preparation plant" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 26. (a) "Coal preparation plant" means a facility or collection of facilities that perform coal preparation.
(b) A coal preparation plant includes each of the following:
(1) Loading facilities.
(2) Storage and stockpile facilities.
(3) Sheds.
(4) Shops and other buildings.
(5) Water treatment and water storage facilities.
(6) Settling basins and impoundments.
(7) Coal processing and other waste disposal areas.
(8) Roads, railroads, and other transport facilities.
(9) Other associated support facilities.
(c) Exempted from the meaning of coal preparation plant is an operation that:
(1) loads coal;
(2) does not crush, size, or screen coal; and
(3) is not located at or near the minesite.
(Natural Resources Commission; 312 IAC 25-1-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001)

312 IAC 25-1-27 "Coal processing waste" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 27. "Coal processing waste" means earth materials that are separated from the product coal during cleaning, concentrating, or other processing or preparation of coal. *(Natural Resources Commission; 312 IAC 25-1-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)*

312 IAC 25-1-28 "Combustible material" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 28. "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. *(Natural Resources Commission; 312 IAC 25-1-28; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)*

312 IAC 25-1-29 "Commission" defined
Authority: IC 14-34-2-1
Affected: IC 14-10-1-1; IC 14-34

Sec. 29. "Commission" refers to the natural resources commission established under IC 14-10-1-1. *(Natural Resources Commission; 312 IAC 25-1-29; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)*

312 IAC 25-1-30 "Community or institutional building" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 30. "Community or institutional building" means a structure, other than a public building or an occupied dwelling, that:
(1) is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups;
(2) functions as an educational, cultural, historic, religious, scientific, correctional, mental health care, or physical health care

facility; or
(3) is used for:
(A) water supply;
(B) power generation;
(C) sewage treatment; or
(D) other public services.
(Natural Resources Commission; 312 IAC 25-1-30; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)

312 IAC 25-1-31 "Compaction" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 31. "Compaction" means increasing the density of a material by reducing the voids between the particles. *(Natural Resources Commission; 312 IAC 25-1-31; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)*

312 IAC 25-1-32 "Complete application" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 32. "Complete application" means an application for a permit or exploration approval that contains all information required under IC 14-34 and this article. *(Natural Resources Commission; 312 IAC 25-1-32; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)*

312 IAC 25-1-33 "Cropland" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 33. "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. Land used for facilities in support of a cropland farming operation, which is adjacent to or an integral part of the operation, is also included. *(Natural Resources Commission; 312 IAC 25-1-33; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)*

312 IAC 25-1-34 "Cumulative impact area" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 34. "Cumulative impact area" means the area, including the permit area, within which impacts resulting from a proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining includes the entire projected lives through final bond release of the following:
(1) The proposed operation.
(2) Existing operations.
(3) Any operation for which a permit application has been submitted to the department.
(4) Any operation that must meet development requirements for leased federal coal for which actual mine development information is available.
(Natural Resources Commission; 312 IAC 25-1-34; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001)

312 IAC 25-1-35 "Cumulative measurement period" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 35. (a) "Cumulative measurement period" means, for purposes of 312 IAC 25-2, the period of time over which both

cumulative production and cumulative revenue are measured.

(b) For purposes of determining the beginning of the cumulative measurement period, subject to approval by the director, the operator must select and consistently use one (1) of the following:

(1) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977.

(2) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(c) For annual reporting purposes under 312 IAC 25-2-12, the end of the period for which cumulative production and revenue is calculated is either for mining areas where:

(1) coal or other minerals were extracted before the effective date of this section, the last day of the preceding month, and each anniversary of that date thereafter; or

(2) extraction of coal or other minerals commenced on or after the effective date of this section, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

(Natural Resources Commission; 312 IAC 25-1-35; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)

312 IAC 25-1-36 "Cumulative production" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 36. "Cumulative production" means, for purposes of 312 IAC 25-2, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages is governed by 312 IAC 25-2-10. *(Natural Resources Commission; 312 IAC 25-1-36; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)*

312 IAC 25-1-37 "Cumulative revenue" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 37. "Cumulative revenue" means, for purposes of 312 IAC 25-2, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period. *(Natural Resources Commission; 312 IAC 25-1-37; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)*

312 IAC 25-1-38 "Department" defined

Authority: IC 14-34-2-1
Affected: IC 14-9-1-1; IC 14-34

Sec. 38. "Department" refers to the department of natural resources established under IC 14-9-1-1. *(Natural Resources Commission; 312 IAC 25-1-38; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)*

312 IAC 25-1-39 "Developed water resources" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 39. "Developed water resources" means land that is used for storing water for beneficial purposes, including the following:

(1) Stock ponds.
(2) Irrigation.
(3) Fire protection.
(4) Flood control.
(5) Water supply.

(Natural Resources Commission; 312 IAC 25-1-39; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)

312 IAC 25-1-40 "Director" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 40. "Director" refers to the director of the department of natural resources (or an authorized representative of the director). *(Natural Resources Commission; 312 IAC 25-1-40; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

312 IAC 25-1-41 "Disturbed area" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 41. "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 is released. *(Natural Resources Commission; 312 IAC 25-1-41; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

312 IAC 25-1-42 "Diverse vegetation" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 42. "Diverse vegetation" means two (2) or more plant species that provide effective and permanent vegetative cover, compatible with the postmining land use, soils, and climate. *(Natural Resources Commission; 312 IAC 25-1-42; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

312 IAC 25-1-43 "Diversion" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 43. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another. *(Natural Resources Commission; 312 IAC 25-1-43; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

312 IAC 25-1-44 "Downslope" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 44. "Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor. *(Natural Resources Commission; 312 IAC 25-1-44; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

312 IAC 25-1-45 "Drinking, domestic, or residential water supply" defined
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 701.5

Sec. 45. "Drinking, domestic, or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial, or industrial enterprises are not included except to the extent the water supply is for direct human consumption, human sanitation, or domestic use. *(Natural Resources Commission; 312 IAC 25-1-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

312 IAC 25-1-45.5 "Drinking water well" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 45.5. "Drinking water well", for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means a bored, drilled, or driven shaft or a dug hole that meets each of the following:
(1) Supplies ground water for human consumption.
(2) Has a depth greater than its largest surface dimension.
(3) Is not permanently abandoned under 312 IAC 13-10-2.
(Natural Resources Commission; 312 IAC 25-1-45.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004)

312 IAC 25-1-46 "Embankment" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 46. "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. *(Natural Resources Commission; 312 IAC 25-1-46; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

312 IAC 25-1-47 "Ephemeral stream" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 47. "Ephemeral stream" means a stream that:
(1) 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
(2) has a channel bottom that is always above the local water table.
(Natural Resources Commission; 312 IAC 25-1-47; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)

312 IAC 25-1-48 "Excess spoil" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 48. "Excess spoil" means spoil in excess of that necessary to backfill and grade affected areas to the approximate original contour. The term may include box cut spoil where it has been demonstrated, for the duration of the mining operation, that the box cut spoil is not needed to restore the approximate original contour. *(Natural Resources Commission; 312 IAC 25-1-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

312 IAC 25-1-49 "Existing structure" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 49. "Existing structure" means a structure or facility used in connection with, or to facilitate, surface coal mining and reclamation operations for which construction begins prior to the implementation of IC 14-34. *(Natural Resources Commission; 312 IAC 25-1-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

312 IAC 25-1-50 "Extraction of coal as an incidental part" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 50. "Extraction of coal as an incidental part" means, for purposes of 312 IAC 25-2-3, the extraction of coal which is

necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. *(Natural Resources Commission; 312 IAC 25-1-50; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

312 IAC 25-1-51 "Federal land" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 51. "Federal land" means any land, including mineral interests owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. *(Natural Resources Commission; 312 IAC 25-1-51; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

312 IAC 25-1-52 "Fish and wildlife habitat" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 52. "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife. *(Natural Resources Commission; 312 IAC 25-1-52; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

312 IAC 25-1-53 "Forestry" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 53. "Forestry" means land used or managed for the long term production of wood, wood fiber, or wood derived products. Land used for facilities in support of a forest harvest and management operation, which is adjacent to or an integral part of the operation, is also included. *(Natural Resources Commission; 312 IAC 25-1-53; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

312 IAC 25-1-54 "Fragile lands" defined
Authority: IC 14-34-2-1
Affected: IC 14-34-18-3

Sec. 54. "Fragile lands" means geographic areas containing natural, ecologic, scientific, or aesthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include the following:
(1) Valuable habitats for fish or wildlife.
(2) Critical habitats for endangered or threatened species of animals or plants.
(3) Uncommon geologic formations.
(4) Paleontological sites.
(5) National natural landmarks.
(6) Areas where mining may cause flooding.
(7) Environmental corridors containing a concentration of ecologic and aesthetic features.
(8) Areas of recreational value due to high environmental quality.
(9) Buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under IC 14-34-18-3 and 312 IAC 25-3-1 through 312 IAC 25-3-2.
(Natural Resources Commission; 312 IAC 25-1-54; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)

312 IAC 25-1-55 "Fugitive dust" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 55. “Fugitive dust” means particulate matter not emitted from a duct or stack that becomes airborne due to the forces of wind or surface coal mining and reclamation operations, or both, during emissions from any of the following:

(1) Haul roads.

(2) Wind erosion of exposed surfaces, storage piles, and spoil piles.

(3) Reclamation operations.

(4) Other activities in which material is either removed, stored, transported, or redistributed.

(Natural Resources Commission; 312 IAC 25-1-55; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001)

312 IAC 25-1-56 “General area” defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 56. “General area” with respect to hydrology, means the topographic and ground water basin surrounding a permit area that is of sufficient size, including area, extent, and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins. *(Natural Resources Commission; 312 IAC 25-1-56; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001)*

312 IAC 25-1-57 “Government-financed construction” defined Version a

Authority: IC 14-34-2-1
Affected: IC 14-34

NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 57. “Government-financed construction” means construction funded fifty percent (50%) or more by funds appropriated from a government financing agency’s budget or obtained from general revenue bonds. The term does not mean a government financing agency guarantee, insurance, loan, funds obtained through industrial revenue bonds or their equivalent, or an in-kind payment. *(Natural Resources Commission; 312 IAC 25-1-57; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001)*

312 IAC 25-1-57 "Government-financed construction" defined Version b

Authority: IC 14-10-2-4; IC 14-34-2-1
Affected: IC 14-34

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 57. "Government-financed construction" means construction funded at fifty percent (50%) or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Government financing at less than fifty percent (50%) may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and IC 14-34-19. Construction funded through:

(1) a government financing agency guarantee;

(2) insurance;

(3) a loan;

(4) funds obtained through industrial revenue bonds or their equivalent; or

(5) an in-kind payment;

does not qualify as government-financed construction. *(Natural Resources Commission; 312 IAC 25-1-57; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site)*

312 IAC 25-1-58 "Government financing agency" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 58. "Government financing agency" means a federal, Indiana, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit that directly or through another unit of government, finances construction. *(Natural Resources Commission; 312 IAC 25-1-58; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001)*

312 IAC 25-1-59 "Ground cover" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 59. "Ground cover" means the area of ground that is covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as percentage of the total area of measurement. At least ninety-five percent (95%) of the species present must be species listed in the revegetation plan. *(Natural Resources Commission; 312 IAC 25-1-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001)*

312 IAC 25-1-60 "Ground water" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 60. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water-saturated. *(Natural Resources Commission; 312 IAC 25-1-60; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001)*

312 IAC 25-1-60.5 "Ground water management zone" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 60.5. "Ground water management zone" means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in 312 IAC 25-6-12.5(a) or 312 IAC 25-6-76.5(a) are met at and beyond the boundary of the region. *(Natural Resources Commission; 312 IAC 25-1-60.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004)*

312 IAC 25-1-61 "Half-shrub" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 61. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die each year. *(Natural Resources Commission; 312 IAC 25-1-61; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001)*

312 IAC 25-1-62 "Head-of-hollow fill" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 62. "Head-of-hollow fill" means a fill structure consisting of any material, other than a coal processing waste and 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 fills with less than two hundred fifty thousand (250,000) cubic yards of material, associated with steep slope mining, the top surface of the fill will be at the elevation of the coal seam. In all other 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 areas. *(Natural Resources Commission; 312 IAC 25-1-62; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001)*

312 IAC 25-1-63 "High level management" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 63. "High level management" means that the following agronomic practices must be implemented:
(1) Using cropping systems that help maintain good tilth and high organic matter content.
(2) Controlling erosion through conservation and water management practices so that the quality of the soil is maintained or improved rather than reduced.
(3) Applying lime and fertilizer in accordance with soil test recommendations of the state agricultural experiment station for targeted yields of reference crops.
(4) Using crop residue to the fullest extent practicable to protect and improve the soil.
(5) Following conservation tillage practices where needed to reduce the hazards of soil compaction and erosion.
(6) Using only the crop varieties that are adapted to the climate and the soil.
(7) Controlling weeds, plant diseases, and harmful insects by currently accepted management techniques.
(8) Draining wet areas using surface or subsurface drainage systems so that excess water on or in the soil does not restrict yields of adapted crops.
(Natural Resources Commission; 312 IAC 25-1-63; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001)

312 IAC 25-1-64 "Highwall" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 64. "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. *(Natural Resources Commission; 312 IAC 25-1-64; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001)*

312 IAC 25-1-65 "Historic lands" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 65. "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include the following:
(1) Archaeological sites.
(2) National historic landmark sites.
(3) Properties listed on, or eligible for listing on, the Indiana state register of historic sites and structures or the National Register of Historic Places.
(4) Sites having religious or cultural significance to native Americans or religious groups.
(5) Properties for which historic designation is pending.
(Natural Resources Commission; 312 IAC 25-1-65; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001)

312 IAC 25-1-66 "Historically used for cropland" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 66. "Historically used for cropland" means any of the following:
(1) 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 land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations.

(2) Lands that the director 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 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved.

(3) 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.

(Natural Resources Commission; 312 IAC 25-1-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)

312 IAC 25-1-67 "Hydrologic balance" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 67. "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, run-off, evaporation, and changes in ground and surface water storage. *(Natural Resources Commission; 312 IAC 25-1-67; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

312 IAC 25-1-68 "Hydrologic regime" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 68. "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 surface, and returns to the atmosphere as vapor by means of evaporation and transpiration. *(Natural Resources Commission; 312 IAC 25-1-68; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

312 IAC 25-1-69 "Imminent danger to the health and safety of the public" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 69. "Imminent danger to the health and safety of the public" means the existence of a condition or practice, or a violation of a permit or another requirement of IC 14-34 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. *(Natural Resources Commission; 312 IAC 25-1-69; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

312 IAC 25-1-70 "Impounding structure" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 70. "Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or another liquid or semiliquid material. *(Natural Resources Commission; 312 IAC 25-1-70; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

312 IAC 25-1-71 "Impoundment" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 71. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste. *(Natural Resources Commission; 312 IAC 25-1-71; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

312 IAC 25-1-72 "In situ process" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 72. "In situ process" means an activity conducted on the surface or underground in connection with inplace distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, the following:

(1) In situ gasification.
(2) In situ leaching.
(3) Slurry mining.
(4) Solution mining.
(5) Borehole mining.
(6) Fluid recovery mining.

(Natural Resources Commission; 312 IAC 25-1-72; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)

312 IAC 25-1-73 "Industrial/commercial" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 73. "Industrial/commercial" means land used for the following:

(1) Extraction or transformation of materials for the fabrication of products, including all heavy and light manufacturing facilities, such as:
  (A) lumber and wood processing;
  (B) chemical manufacturing;
  (C) petroleum refining; and
  (D) fabricated metal products manufacturing.

Land used for facilities in support of an operation, which is adjacent to or an integral part of the operation, is also included. Support facilities include all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of a commercial operation, which is adjacent to or an integral part of the operation, is also included. Support facilities include parking, storage, or shipping facilities.

(Natural Resources Commission; 312 IAC 25-1-73; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)

312 IAC 25-1-74 "Intermittent stream" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 74. "Intermittent stream" means a stream or reach of a stream that:

(1) drains a watershed of at least one (1) square mile; or
(2) is below the local water table for at least some part of the year and obtains its flow from both surface run-off and ground water discharge.

(Natural Resources Commission; 312 IAC 25-1-74; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)

312 IAC 25-1-75 "Irreparable damage to the environment" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 75. "Irreparable damage to the environment" means any damage to the environment that cannot be or has not been corrected by actions of the applicant. *(Natural Resources Commission; 312 IAC 25-1-75; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)*

312 IAC 25-1-75.5 "Land eligible for remining" defined
Authority: IC 14-34-2-1
Affected: IC 14-34-19

Sec. 75.5. "Lands eligible for remining" means, for the purposes of 312 IAC 25-4-105.5, 312 IAC 25-4-114, 312 IAC 25-4-115, and 312 IAC 25-5-7, those lands eligible for funding under IC 14-34-19 or 30 U.S.C. 1232(g)(4). *(Natural Resources Commission; 312 IAC 25-1-75.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, eff Jan 1, 2005)*

312 IAC 25-1-76 "Land occasionally cut for hay" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 76. "Land occasionally cut for hay" means pastureland. *(Natural Resources Commission; 312 IAC 25-1-76; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)*

312 IAC 25-1-77 "Land use" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 77. "Land use" means a specific use or management-related activity, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. The categories of land use are as follows:
(1) Cropland.
(2) Developed water resource.
(3) Fish and wildlife habitat.
(4) Forestry.
(5) Industrial or commercial.
(6) Pastureland (or land occasionally cut for hay).
(7) Recreation.
(8) Residential.
(9) Undeveloped land.
Changes of land use or uses from one (1) of these categories to another is a change to an alternative land use that is subject to approval by the director. *(Natural Resources Commission; 312 IAC 25-1-77; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)*

312 IAC 25-1-78 "Litter" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 78. "Litter" means the detached recognizable portions of the plants under evaluation that cover the ground surface. *(Natural Resources Commission; 312 IAC 25-1-78; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001)*

312 IAC 25-1-79 "Material damage" defined
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 701.5

Sec. 79. "Material damage", in the context of 312 IAC 25-4-91 and 312 IAC 25-6-123, means any:
(1) functional impairment of surface lands, features, structures, or facilities;
(2) physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
(3) significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.
(Natural Resources Commission; 312 IAC 25-1-79; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001)

312 IAC 25-1-80 "Mining area" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 80. "Mining area" means, for purposes of 312 IAC 25-2-4 through 312 IAC 25-2-12, an individual excavation site or pit from which coal, other minerals, and overburden are removed. *(Natural Resources Commission; 312 IAC 25-1-80; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001)*

312 IAC 25-1-81 "MSHA" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 81. "MSHA" means the Mine Safety and Health Administration. *(Natural Resources Commission; 312 IAC 25-1-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001)*

312 IAC 25-1-82 "Mulch" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 82. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth. *(Natural Resources Commission; 312 IAC 25-1-82; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001)*

312 IAC 25-1-83 "Native species" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 83. "Native species" means species previously introduced and adapted in the general vicinity of the coal producing region in Indiana. *(Natural Resources Commission; 312 IAC 25-1-83; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001)*

312 IAC 25-1-84 "Natural hazard lands" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 84. "Natural hazard lands", for purposes of 312 IAC 25-3-3 through 312 IAC 25-3-5, means a geographic area in which natural conditions exist that 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 the following:
(1) Landslides.
(2) Cave-ins.
(3) Large or encroaching sand dunes.
(4) Severe wind or soil erosion.
(5) Frequent flooding.
(6) Avalanches.
(7) Areas of unstable geology.
(Natural Resources Commission; 312 IAC 25-1-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001)

312 IAC 25-1-85 "Noncommercial building" defined
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 701.5

Sec. 85. "Noncommercial building" means any building other than an occupied residential dwelling that at the time the

subsidence occurs is used on a regular or temporary basis as a public building or community or institutional building, as those terms are defined under sections 30 and 111 of this rule. Any building used only for commercial agricultural, industrial, retail, or other commercial enterprises is excluded. *(Natural Resources Commission; 312 IAC 25-1-85; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001)*

312 IAC 25-1-86 "Noxious weeds" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 86. "Noxious weeds" means species that have been included on an official Indiana list of noxious weeds. *(Natural Resources Commission; 312 IAC 25-1-86; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001)*

312 IAC 25-1-87 "Occupied dwelling" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 87. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation. *(Natural Resources Commission; 312 IAC 25-1-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001)*

312 IAC 25-1-88 "Occupied residential dwelling and structures related thereto" defined
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 701.5

Sec. 88. "Occupied residential dwelling and structures related thereto" means, for purposes of 312 IAC 25-4-91 and 312 IAC 25-6-123, any building or other structure that, at the time the subsidence occurs is used either temporarily, occasionally, seasonally, or permanently for human habitation. The term also includes any building, structure, or facility installed on, above, below, or in a combination thereof, the land surface if that building, structure, or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, the following:

(1) Garages.
(2) Storage sheds and barns.
(3) Greenhouses and related buildings.
(4) Utilities and cables.
(5) Fences and other enclosures.
(6) Retaining walls.
(7) Paved or improved patios.
(8) Walks and driveways.
(9) Septic sewage treatment facilities.
(10) Lot drainage and lawn and garden irrigation systems.

Any structure used only for commercial agricultural, industrial, retail, or other commercial purposes is excluded. *(Natural Resources Commission; 312 IAC 25-1-88; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001)*

312 IAC 25-1-89 "Operator" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 89. "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth or from coal refuse piles by coal mining within twelve (12) consecutive calendar months in any one (1) location. *(Natural Resources Commission; 312 IAC 25-1-89; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001)*

312 IAC 25-1-90 "Other minerals" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 90. "Other minerals" means, for the purpose of 312 IAC 25-2-4 through 312 IAC 25-2-12, any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material. *(Natural Resources Commission; 312 IAC 25-1-90; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001)*

312 IAC 25-1-91 "Other treatment facilities" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 91. "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that:
(1) have a point source discharge; and
(2) are utilized to:
(A) prevent additional contributions of dissolved or suspended solids to stream flow or run-off outside the permit area; or
(B) comply with all applicable state and federal water quality laws and regulations.
(Natural Resources Commission; 312 IAC 25-1-91; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001)

312 IAC 25-1-92 "Outslope" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 92. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe. *(Natural Resources Commission; 312 IAC 25-1-92; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001)*

312 IAC 25-1-93 "Overburden" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 93. "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil. *(Natural Resources Commission; 312 IAC 25-1-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001)*

312 IAC 25-1-94 "Owned or controlled" and "owns or controls" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 94. (a) "Owned or controlled" and "owns or controls" means any one (1) or a combination of the relationships specified in the following and subsection (b):
(1) A permittee of a surface coal mining operation.
(2) Based on instruments of ownership or voting securities, owning of record in excess of fifty percent (50%) of a person.
(3) Any other relationship that gives one (1) person authority, directly or indirectly, to determine the manner in which an applicant, an operator, or other person 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 surface coal mining operation is conducted:
(1) An officer or director of the person.
(2) The operator of a surface coal mining operation.
(3) An ability to commit the financial or real property assets or working resources of a person.

(4) A general partner in a partnership.
(5) Based on the instruments of ownership or the voting securities of a corporation, ownership of record of ten percent (10%) through fifty percent (50%) of the corporation.
(6) Ownership or control of coal to be mined by another person under a lease, sublease, or other contract where there is a right to receive the coal after mining or authorization to determine the manner in which that person or another person conducts a surface coal mining operation.
(Natural Resources Commission; 312 IAC 25-1-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001)

312 IAC 25-1-95 "Pastureland" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 95. "Pastureland" means land used primarily for the long term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed or hay. Land used for facilities in support of pastureland or land occasionally cut for hay, which is adjacent to or an integral part of the operation, is also included. *(Natural Resources Commission; 312 IAC 25-1-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001)*

312 IAC 25-1-96 "Perennial stream" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 96. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface run-off. The term does not include an intermittent stream or ephemeral stream. *(Natural Resources Commission; 312 IAC 25-1-96; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001)*

312 IAC 25-1-97 "Performance bond" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 97. "Performance bond" means a surety bond, certificate of deposit, letter of credit, cash, or a combination thereof, by which a permittee assures faithful performance of all the requirements of IC 14-34, this article, and the requirements of the permit and reclamation plan. *(Natural Resources Committee, 312 IAC 25-1-97; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)*

312 IAC 25-1-98 "Permanent diversion" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 98. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed that has been approved for retention by the director and other appropriate state agencies. *(Natural Resources Commission; 312 IAC 25-1-98; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)*

312 IAC 25-1-99 "Permanent impoundment" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 99. "Permanent impoundment" means an impoundment that is approved by the director in the approved permit and, if required, by other state and federal agencies for retention as part of the postmining land use. *(Natural Resources Commission; 312 IAC 25-1-99; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)*

312 IAC 25-1-100 "Permit" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 100. "Permit" means a permit to conduct surface coal mining and reclamation operations (approved by the director or the director's delegate) under IC 14-34 and this article. *(Natural Resources Commission; 312 IAC 25-1-100; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)*

312 IAC 25-1-101 "Permit area" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 101. "Permit area" means the area of land and water within the boundaries of the permit that are designated on the permit application maps, as approved by the director. The permit area includes all areas that are or will be affected by the surface coal mining and reclamation operations during the term of the permit. *(Natural Resources Commission; 312 IAC 25-1-101; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)*

312 IAC 25-1-102 "Permittee" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 102. "Permittee" means a person holding, or required by IC 14-34 to hold, a permit to conduct surface coal mining and reclamation operations issued by the department under this article and the regulatory program. *(Natural Resources Commission; 312 IAC 25-1-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)*

312 IAC 25-1-103 "Person" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 103. "Person" means the following:

(1) Any:
- (A) individual;
- (B) partnership;
- (C) association;
- (D) society;
- (E) joint venture;
- (F) joint stock company;
- (G) firm;
- (H) company;
- (I) corporation;
- (J) cooperative; or
- (K) other business organization.

(2) Any:
- (A) agency;
- (B) unit; or
- (C) instrumentality;

of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(Natural Resources Commission; 312 IAC 25-1-103; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)

312 IAC 25-1-104 "Person having an interest, which is or may be adversely affected or person with a valid legal interest" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 104. "Person having an interest, which is or may be adversely affected or person with a valid legal interest" includes any person:

(1) who uses any resources of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the state; or

(2) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the state.

(Natural Resources Commission; 312 IAC 25-1-104; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)

312 IAC 25-1-105 "Pipeline" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 105. (a) "Pipeline" means the physical facilities through which petroleum, natural gas, or another hazardous product is transported where:

(1) pipe is used that has a nominal diameter of at least six (6) inches; or

(2) operations occur at a pressure of more than two hundred seventy-five (275) pounds per square inch.

(b) A pipeline also includes the following:

(1) Compressor units.

(2) Metering stations.

(3) Holders.

(4) Fabricated assemblies.

(5) The valves and other appurtenances attached to the pipe.

(Natural Resources Commission; 312 IAC 25-1-105; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)

312 IAC 25-1-106 "Precipitation event" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 106. "Precipitation event" means a quantity of water resulting from:

(1) drizzle;

(2) rain;

(3) snow;

(4) snowmelt emanating from snow cover;

(5) sleet; or

(6) hail;

in a limited period of time. The term may be expressed according to a recurrence interval. *(Natural Resources Commission; 312 IAC 25-1-106; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

312 IAC 25-1-107 "Previously mined area" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 107. "Previously mined area" means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this article. *(Natural Resources Commission; 312 IAC 25-1-107; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

312 IAC 25-1-108 "Prime farmland" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 108. "Prime farmland" means those lands that are defined by the United States Secretary of Agriculture and have historically been used for cropland. *(Natural Resources Commission; 312 IAC 25-1-108; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

312 IAC 25-1-109 "Principal shareholder" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 109. "Principal shareholder" means any person who is of record the beneficial owner of ten percent (10%) or more of any class of voting stock. *(Natural Resources Commission; 312 IAC 25-1-109; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-109.5 "Property boundary" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 109.5. "Property boundary", for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means the edge of a contiguous parcel of land owned by or leased to the permittee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous. *(Natural Resources Commission; 312 IAC 25-1-109.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004)*

312 IAC 25-1-110 "Property to be mined" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 110. "Property to be mined" means both the surface and mineral estates on and underneath lands that are within the permit area. *(Natural Resources Commission; 312 IAC 25-1-110; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-111 "Public building" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 111. "Public building" means a structure that is owned by a public agency or used principally for public business meetings or other group gatherings. *(Natural Resources Commission; 312 IAC 25-1-111; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-112 "Public office" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 112. "Public office" means a facility under the direction and control of a governmental entity that is open to public access on a regular basis during reasonable business hours. *(Natural Resources Commission; 312 IAC 25-1-112; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-113 "Public park" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 113. "Public park" means an area dedicated or designated by any federal, Indiana, 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. *(Natural Resources Commission; 312 IAC 25-1-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-114 "Public road" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 114. "Public road" means a thoroughfare open to the public for passage of vehicles owned or maintained by a federal, state, or local agency. *(Natural Resources Commission; 312 IAC 25-1-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-115 "Randomly located" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 115. "Randomly located" means the selection of a location that is statistically independent of all previous and future location selections. *(Natural Resources Commission; 312 IAC 25-1-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-116 "Recharge capacity" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 116. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and run-off to infiltrate and reach the zone of saturation. *(Natural Resources Commission; 312 IAC 25-1-116; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-117 "Reclamation" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 117. "Reclamation" means those actions taken to restore mined land, as required by IC 14-34 and this article, to a postmining land use approved by the director. *(Natural Resources Commission; 312 IAC 25-1-117; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

312 IAC 25-1-118 "Recreation" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 118. "Recreation" means 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. *(Natural Resources Commission; 312 IAC 25-1-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001)*

312 IAC 25-1-119 "Recurrence interval" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 119. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. *(Natural Resources Commission; 312 IAC 25-1-119; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001)*

312 IAC 25-1-120 "Reference area" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 120. "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 crop production methods. A reference area must be representative of geology, soil, slope, and vegetation in the permit area. *(Natural Resources Commission; 312 IAC 25-1-120; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001)*

312 IAC 25-1-121 "Refuse pile" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 121. "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or another liquid or semiliquid material. *(Natural Resources Commission; 312 IAC 25-1-121; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001)*

312 IAC 25-1-122 "Regional director" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 122. "Regional director" means a regional director of the United States Department of the Interior, Office of Surface Mining or a regional director's representative. *(Natural Resources Commission; 312 IAC 25-1-122; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001)*

312 IAC 25-1-123 "Renewable resource lands" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 123. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters and areas for agricultural and silvicultural production of food and fiber. *(Natural Resources Commission; 312 IAC 25-1-123; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001)*

312 IAC 25-1-124 "Replacement of water supply" defined
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 701.5

Sec. 124. (a) "Replacement of water supply", with respect to protected water supplies contaminated, diminished, or interrupted by surface or underground coal mining operations, means a provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes a provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(b) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one (1) time payment in an amount that covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(c) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner. *(Natural Resources Commission; 312 IAC 25-1-124; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-1-125 "Residential" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 125. "Residential" means land used for single and multiple family housing, mobile home parks, and other residential lodging. Land used for facilities in support of a residential operation, which is adjacent to or an integral part of the operation, is also included. Support facilities include vehicle parking and open space that directly relate to the residential use. *(Natural Resources Commission; 312 IAC 25-1-125; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001)*

312 IAC 25-1-126 "Road" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 126. (a) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the following:

(1) Roadbed.
(2) Shoulders.
(3) Parking and side areas.
(4) Approaches.
(5) Structures.
(6) Ditches.
(7) Surface.
(8) Such contiguous appendages as are necessary for the total structure.

(b) The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas.

(c) The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. *(Natural Resources Commission; 312 IAC 25-1-126; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001)*

312 IAC 25-1-127 "Rooting media" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 127. "Rooting media" means the soil material beneath the topsoil consisting of replaced B horizon, B/C mixture, or other suitable soil material as determined by the director. *(Natural Resources Commission; 312 IAC 25-1-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001)*

312 IAC 25-1-128 "Safety factor" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 128. "Safety factor" means the ratio of the available sheer strength to the developed sheer stress or the ratio of the sum of the resisting forces to the sum of the loading or driving forces as determined by accepted engineering practices. *(Natural Resources Commission; 312 IAC 25-1-128; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001)*

312 IAC 25-1-129 "Shadow area" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 129. "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 IC 14-34 that may be adversely impacted by

underground mining operations, including impacts of subsidence. *(Natural Resources Commission; 312 IAC 25-1-129; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001)*

312 IAC 25-1-130 "Shelter belt" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 130. "Shelter belt" means an area used for protection from wind or snow and that is subject to proof-of-productivity standards for fish and wildlife habitat. *(Natural Resources Commission; 312 IAC 25-1-130; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001)*

312 IAC 25-1-131 "Significant, imminent environmental harm to land, air, or water resources" construed

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 131. "Significant, imminent environmental harm to land, air, or water resources" is construed as follows:

(1) "Environmental harm" means an adverse impact on land, air, or water resources (including plant and animal life) that is not contemplated by the permit.

(2) "Imminent" means a condition, practice, or violation that is causing or may reasonably be expected to cause an environmental harm before the condition or practice can be abated.

(3) "Significant" means the environmental harm:

(A) is more than local in scope;

(B) when continued, poses a serious environmental hazard to existing land, air, or water resources; and

(C) will have a long-lasting, detrimental effect before the end of a reasonable abatement time.

(Natural Resources Commission; 312 IAC 25-1-131; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)

312 IAC 25-1-132 "Siltation structure" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 132. "Siltation structure" means a primary sediment control structure designed, constructed, and maintained as required by this article and includes a barrier, dam, or excavated depression that slows water run-off to allow sediment to settle out. A siltation structure cannot include a secondary sedimentation control structure (such as riprap, straw dike, check dam, mulch, dugout, or another measure that reduces overland flow velocity, reduces run-off volume, or traps sediment) to the extent that the secondary sedimentation structure drains to a siltation structure. *(Natural Resources Commission; 312 IAC 25-1-132; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

312 IAC 25-1-133 "Slope" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 133. "Slope" means the 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, for example: 1v:5h=20%=11.3 degrees. *(Natural Resources Commission; 312 IAC 25-1-133; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

312 IAC 25-1-134 "Soil horizon" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 134. "Soil horizon" means each contrasting layer of soil parallel or nearly parallel to the land surface. Each soil horizon is differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are as follows:

(1) The A horizon.
(2) The B horizon.
(3) The C horizon.
(Natural Resources Commission; 312 IAC 25-1-134; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)

312 IAC 25-1-135 "Soil productivity" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 135. "Soil productivity" means the capacity of a soil for producing a specified plant or sequence of plants under a physically defined set of management practices. *(Natural Resources Commission; 312 IAC 25-1-135; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

312 IAC 25-1-136 "Soil survey" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 136. "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. A soil survey must meet the standards of the National Cooperative Soil Survey. *(Natural Resources Commission; 312 IAC 25-1-136; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

312 IAC 25-1-137 "Spoil" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 137. "Spoil" means overburden that has been removed during a surface coal mining operation. *(Natural Resources Commission; 312 IAC 25-1-137; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)*

312 IAC 25-1-138 "Stabilize" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 138. "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. *(Natural Resources Commission; 312 IAC 25-1-138; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)*

312 IAC 25-1-139 "Steep slope" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 139. "Steep slope" means any slope of more than twenty (20) degrees or such lesser slope as may be designated by the director after consideration of soil, climate, and other characteristics of a region. *(Natural Resources Commission; 312 IAC 25-1-139; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)*

312 IAC 25-1-140 "Subsoil" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 140. "Subsoil" means the B horizon. *(Natural Resources Commission; 312 IAC 25-1-140; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)*

312 IAC 25-1-141 "Substantial legal and financial commitments in a surface coal mining operation" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 141. "Substantial legal and financial commitments in a surface coal mining operation", for purposes of 312 IAC 25-3-3 through 312 IAC 25-3-5, 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 is 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, as described in this example, alone are not sufficient to constitute substantial legal and financial commitments. *(Natural Resources Commission; 312 IAC 25-1-141; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)*

312 IAC 25-1-142 "Substantially disturb" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 142. "Substantially disturb", for purposes of coal exploration, means any one (1) or any combination of one (1) or more of the following:

(1) To significantly impact land or water resources by blasting.
(2) The removal of vegetation, topsoil, or overburden.
(3) The construction of roads or other access routes.
(4) The placement of excavated earth or waste material on the natural land surface or by other such activities.
(5) The removal of more than two hundred fifty (250) tons of coal.

(Natural Resources Commission; 312 IAC 25-1-142; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)

312 IAC 25-1-143 "Support facility" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 143. (a) "Support facility" means a facility resulting from, or incidental to, an activity identified in section 145(1) of this rule and the area upon which the facility is located.

(b) As used in subsection (a), "resulting from or incidental to" connotes an element of proximity to the activity.

(c) A support facility includes the following:

(1) Mine buildings.
(2) Bath houses.
(3) Coal loading facilities.
(4) Coal crushing and sizing facilities.
(5) Coal storage facilities.
(6) Equipment and storage facilities.
(7) Fan buildings.
(8) Hoist buildings.
(9) Sheds, shops, and other buildings.
(10) Facilities used to treat and store water for mine consumption.
(11) Railroads, surface conveyor systems, chutes, aerial tramways, and other transportation facilities, not including roads.

(Natural Resources Commission; 312 IAC 25-1-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)

312 IAC 25-1-144 "Surface coal mining and reclamation operations" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 144. "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary

or incidental to the reclamation of such operations. The term includes surface coal mining operations. *(Natural Resources Commission; 312 IAC 25-1-144; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3424, eff Dec 1, 2001)*

312 IAC 25-1-145 "Surface coal mining operation" defined

Authority: IC 14-34-2-1
Affected: IC 14-34-9; IC 14-34-11

Sec. 145. "Surface coal mining operation" means the following:

(1) An activity conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of IC 14-34-11, 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. These activities include the following:

(A) Excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, hilltop removal, box cut, open pit, and area mining.

(B) The extraction of coal from a coal refuse pile.

(C) The use of explosives and blasting.

(D) In situ distillation or retorting.

(E) Coal preparation.

(F) The loading of coal for interstate commerce at or near the minesite.

(2) Areas upon which the activities described in subdivision (1) occur or where those activities disturb the natural land surface. These areas also include the following:

(A) Any adjacent land the use of which is incidental to any such activities.

(B) 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:

(i) haulage and excavation;
(ii) workings;
(iii) impoundments;
(iv) dams;
(v) ventilation shafts;
(vi) entryways;
(vii) refuse banks;
(viii) dumps;
(ix) stockpiles;
(x) overburden piles;
(xi) spoil banks;
(xii) culm banks;
(xiii) tailings;
(xiv) holes or depressions;
(xv) repair areas;
(xvi) storage areas;
(xvii) processing areas;
(xviii) shipping areas; and
(xix) other areas upon which are:

(AA) sited structures;
(BB) facilities; or
(CC) other property or material on the surface;

resulting from or incident to those activities.

(3) Exempted from the meaning of surface coal mining operations are the following activities:

(A) The extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds percent (16⅔%) of the tonnage of minerals removed for purposes of commercial use or sale.

(B) Coal exploration subject to IC 14-34-9.

(Natural Resources Commission; 312 IAC 25-1-145; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3424, eff Dec 1, 2001)

312 IAC 25-1-146 "Surface coal mining operations that exist on the date of enactment" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 146. "Surface coal mining operations that exist on the date of enactment" means, for purposes of 312 IAC 25-3-1 through 312 IAC 25-3-2, all surface mining operations that were being conducted on August 3, 1977. *(Natural Resources Commission; 312 IAC 25-1-146; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-147 "Surface mining activities" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 147. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the material over a 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. *(Natural Resources Commission; 312 IAC 25-1-147; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-148 "Surface soil" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 148. "Surface soil" means the A horizon. *(Natural Resources Commission; 312 IAC 25-1-148; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-149 "Suspended solids or nonfilterable residue expressed as milligrams per liter" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 149. "Suspended solids or nonfilterable residue expressed as milligrams per liter" means organic or inorganic materials carried or held in suspension in water that are retained by a standard glass fiber filter in the procedure outlined by 40 CFR 136. *(Natural Resources Commission; 312 IAC 25-1-149; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-150 "Temporary diversion" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 150. "Temporary diversion" means a diversion of a stream or overland flow that is used during coal exploration or surface coal mining and reclamation operations and not approved by the director to remain after reclamation as part of the approved postmining land use. *(Natural Resources Commission; 312 IAC 25-1-150; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-151 "Temporary impoundment" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 151. "Temporary impoundment" means an impoundment used during a surface coal mining and reclamation operation, but not approved by the director in the approved permit to remain as part of the approved postmining land use. *(Natural Resources Commission; 312 IAC 25-1-151; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-152 "Ton" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 152. "Ton" means two thousand (2,000) pounds avoirdupois (ninety thousand seven hundred eighteen hundred-thousandths (.90718) metric ton). *(Natural Resources Commission; 312 IAC 25-1-152; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-153 "Topsoil" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 153. "Topsoil" means the A soil horizon layer of the three (3) major soil horizons. *(Natural Resources Commission; 312 IAC 25-1-153; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

312 IAC 25-1-154 "Toxic-forming materials" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 154. "Toxic-forming materials" means earth materials or wastes that, 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 biota or uses of water. *(Natural Resources Commission; 312 IAC 25-1-154; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*

312 IAC 25-1-155 "Toxic mine drainage" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 155. "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 that contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to the substance. *(Natural Resources Commission; 312 IAC 25-1-155; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*

312 IAC 25-1-155.5 "Unanticipated event or condition" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 155.5. "Unanticipated event or condition" means, for the purposes of 312 IAC 25-4-114, an event or condition that is encountered in a remining operation and was not contemplated by the applicable surface mining and reclamation permit. *(Natural Resources Commission; 312 IAC 25-1-155.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, eff Jan 1, 2005)*

312 IAC 25-1-156 "Underground development waste" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 156. "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities. *(Natural Resources Commission; 312 IAC 25-1-156; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*

312 IAC 25-1-157 "Underground mining activities" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 157. "Underground mining activities" means a combination of the following:
(1) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance,

and reclamation of the following:

(A) Roads.
(B) Aboveground repair areas.
(C) Storage areas.
(D) Processing areas.
(E) Shipping areas.
(F) Areas upon which are sited support facilities, including hoist and ventilating ducts.
(G) Areas utilized for the disposal and storage of waste.
(H) Areas on which materials incident to underground mining operations are placed.

(2) Underground operations, such as underground construction, operation, and reclamation of the following:

(A) Shafts.
(B) Adits.
(C) Underground support facilities.
(D) In situ processing.
(E) Underground mining, hauling, storage, and blasting.

(Natural Resources Commission; 312 IAC 25-1-157; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)

312 IAC 25-1-158 "Undeveloped land–no current use or land management" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 158. "Undeveloped land–no current use or land management" means 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. *(Natural Resources Commission; 312 IAC 25-1-158; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*

312 IAC 25-1-159 "Valid existing rights" defined and construed

Authority: IC 14-34-2-1
Affected: IC 14-34-18-3

Sec. 159. (a) "Valid existing rights", for purposes of 312 IAC 25-2-1, 312 IAC 25-3-1, and 312 IAC 25-3-5, means the following:

(1) Except for haul roads:

(A) those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document that authorized the applicant to conduct surface coal mining operations; and
(B) the person proposing to conduct surface coal mining operations on such lands:

(i) had been validly issued or exercised good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct operations on those lands;
(ii) can demonstrate to the director that the coal is both needed for and immediately adjacent to, an ongoing surface mining operation for which all permits were obtained prior to August 3, 1977; or
(iii) can demonstrate that the operation was in existence or operation at the time an area became protected under IC 14-34-18-3 or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 14-34-18-3.

(2) For haul roads:

(A) a recorded right-of-way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977;
(B) any other road in existence as of August 3, 1977; or
(C) any haul road that was in existence or operating at the time an area became protected under IC 14-34-18-3, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 14-34-18-3.

(b) The interpretation of the terms of a document used to establish a valid existing right is based upon the common law concerning the interpretation of documents conveying mineral rights. If there is no applicable common law, the interpretation is based upon the following:

(1) The usage and custom at the time and place where a document came into existence.

(2) A showing by the applicant that the parties to the document contemplated the right to conduct the same underground or surface activities for which the applicant claims a valid existing right.

(c) As used in this section "valid existing right" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights, which alone do not constitute valid existing rights, include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a federal or state permit.

(d) If an area comes under the protection of IC 14-34-18-3 after August 3, 1977, valid existing rights are present if a validly authorized surface coal mining operation exists on that area on the date the protection comes into existence. *(Natural Resources Commission; 312 IAC 25-1-159; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*

312 IAC 25-1-160 "Valley fill" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 160. "Valley fill" means a fill structure consisting of any material other than coal waste and 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 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. *(Natural Resources Commission; 312 IAC 25-1-160; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001)*

312 IAC 25-1-161 "Violation notice" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 161. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication. *(Natural Resources Commission; 312 IAC 25-1-161; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001)*

312 IAC 25-1-162 "Water table" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 162. "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. *(Natural Resources Commission; 312 IAC 25-1-162; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001)*

312 IAC 25-1-163 "Willful violation" defined

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 163. "Willful violation" means an act or omission that:

(1) violates IC 14-34, this article, another state law, a federal statute, a federal regulation, or an individual permit condition; and

(2) is committed by a person who intends the result that actually occurs.

(Natural Resources Commission; 312 IAC 25-1-163; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001)

Rule 2. General Provisions

312 IAC 25-2-1 Severability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 1. If any provision of this article or any part thereof is disapproved by the Secretary of the United States Department of the Interior under 30 CFR 732.13(a) and 30 U.S.C. 1253(b), as a part of the review of an Indiana program submittal, such provision or part thereof shall be deemed to be conditionally withdrawn. The remainder of the Indiana program will be resubmitted under 30 U.S.C. 1253(c) and 30 CFR 732.13(f). Provided, however, in the event that, upon judicial review, under 30 U.S.C. 526(a)(1), of the Secretary's decision disapproving any such provision or part thereof, the Secretary's decision is overturned by a final judgment of the United States District Court, such provision will be deemed to have been included in the resubmitted program and shall be effective as part of the Indiana program. *(Natural Resources Commission; 312 IAC 25-2-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001)*

312 IAC 25-2-2 Enforceability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 2. (a) Notwithstanding any other rule to the contrary, neither the director nor the commission shall enforce any provision of the rules promulgated to implement IC 14-34 if any court of competent jurisdiction renders a final judgment, which holds that the comparable provision in any federal regulation promulgated to implement P.L.95-87, the federal Surface Mining Control and Reclamation Act of 1977, is unconstitutional or otherwise invalid.

(b) Neither the director nor the commission shall enforce this article until the United States Department of the Interior has published in the Federal Register notice of approval of Indiana's permanent regulatory program. *(Natural Resources Commission; 312 IAC 25-2-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001)*

312 IAC 25-2-3 Government-financed highway or other construction; exemption for coal extraction; information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 3. (a) Any person extracting coal incident to government-financed highway or other construction who extracts more than two hundred fifty (250) tons of coal shall maintain, on the site of the extraction operation and available for inspection, documents that show the following:

(1) A description of the construction project.

(2) The exact location of the construction, right-of-way, or boundaries of the area that will be directly affected by the construction.

(3) The government agency that is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

(b) Coal extraction, which is incidental to government-financed construction, is otherwise exempt from IC 14-34. *(Natural Resources Commission; 312 IAC 25-2-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001)*

312 IAC 25-2-4 Exemption for coal extraction incidental to the extraction of other minerals

Authority: IC 14-34-2-1
Affected: IC 14-8-2-273; IC 14-34-1-2

Sec. 4. Sections 2 through 3 of this rule, this section, and sections 5 through 12 of this rule implement the exemption contained in IC 14-8-2-273 concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16⅔%) of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. *(Natural Resources Commission; 312 IAC 25-2-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001)*

312 IAC 25-2-5 Exemption for coal extraction incidental to the extraction of other minerals; application requirements and procedures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 5. (a) Any person who plans to commence or continue coal extraction after the effective date of this section, in reliance

on the incidental mining exemption, shall file an administratively complete application for exemption with the director and shall not commence coal extraction until the director has approved the application.

(b) Operations in existence before the effective date of this section, which have been conducted in reliance upon the incidental mining exemption before that date, may continue mining operations for sixty (60) days after the effective date. Coal extraction may not continue after the sixty (60) day period unless that person files an administratively complete application for exemption with the director. If an administratively complete application for exemption is filed within the sixty (60) day period, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the director makes an administrative decision on the application.

(c) The director shall notify the applicant if the application for exemption is incomplete and may at any time require the submittal of additional information.

(d) Following publication of the newspaper notice required by section 6(9) of this rule, the director shall provide a period of at least thirty (30) days during which time any person having an interest that is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Upon making an exemption determination, the director shall complete the following:

(1) No later than ninety (90) days after filing an administratively complete application, the director shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under section 4 of this rule, this section, and sections 6 through 12 of this rule and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the director at that time.

(3) If the director fails to provide an applicant with the determination as specified in subdivision (1), an applicant who has not begun may commence coal extraction pending a determination on the application unless the director issues an interim finding, together with reasons therefore, that the applicant may not begin coal extraction.

(f) For administrative review, the following shall apply:

(1) Any adversely affected person may request administrative review of a determination under subsection (e) within thirty (30) days of the notification of the determination under 312 IAC 3-1-3.

(2) A petition for administrative review filed under 312 IAC 3-1-3 shall not suspend the effect of a determination under subsection (e).

(Natural Resources Commission; 312 IAC 25-2-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3429, eff Dec 1, 2001)

312 IAC 25-2-6 Exemption for coal extraction incidental to the extraction of other minerals; contents of application for exemption

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 702.12

Sec. 6. An application for exemption shall include, at a minimum, the following:

(1) The name and address of the applicant.

(2) A list of the minerals sought to be extracted.

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation.

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area.

(5) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area.

(6) The basis for all annual production, revenue, and fair market value estimates.

(7) A description, including county, section, township, range, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas.

(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation.

(9) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of public notice that an application for exemption has been filed with the director. The public notice must identify the persons claiming the exemption

and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.

(10) Representative stratigraphic cross sections based on test borings or other information identifying and showing the relative position, approximate thickness, and density of the coal and each other mineral to be extracted for commercial use or sale, and the relative position and thickness of any material not classified as other minerals that will also be extracted during the conduct of mining activities.

(11) A map of appropriate scale that clearly identifies the mining area.

(12) A general description of mining and mineral processing activities for the mining area.

(13) A summary of sales commitments and agreements for future delivery, if any, that the applicant has received for other minerals to be extracted from the mining area or a description of potential markets for such minerals.

(14) If the other minerals are to be commercially used by the applicant, a description specifying the use.

(15) For operations having extracted coal or other minerals before filing an application for exemption, in addition to the information required in subdivisions (1) through (14), the following information must be submitted:

(A) Any relevant documents the operator has received from the director documenting its exemption from the requirements of IC 14-34.

(B) The cumulative production of the coal and other minerals from the mining area.

(C) Estimated tonnages of stockpiled coal and other minerals.

(16) Any other information pertinent to the qualification of the operation as exempt.

(Natural Resources Commission; 312 IAC 25-2-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3429, eff Dec 1, 2001)

312 IAC 25-2-7 Exemption for coal extraction incidental to the extraction of other minerals; public availability of information

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 702.13

Sec. 7. (a) Except as provided in subsection (c), all information submitted to the director under this rule shall be made immediately available for public inspection and copying and shall be maintained by the director until at least three (3) years after expiration of the period during which the subject mining area is active.

(b) The director may keep information submitted to the director under this rule confidential if the person submitting the information requests in writing, at the time of submission, that it be kept confidential and demonstrates to the director that the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this rule.

(c) Information requested to be held confidential under subsection (b) shall not be made publicly available until after notice and opportunity to be heard is afforded to persons both seeking and opposing disclosure of the information. *(Natural Resources Commission; 312 IAC 25-2-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3430, eff Dec 1, 2001)*

312 IAC 25-2-8 Exemption for coal extraction incidental to the extraction of other minerals; requirements for exemption

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 8. (a) Activities are exempt from the requirements of IC 14-34 only if all of the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually as described in this section does not exceed sixteen and two-thirds percent (16⅔%) of the total cumulative production of coal and other minerals removed during the period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed fifty percent (50%) of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) A person seeking, or who has obtained, an exemption from the requirements of IC 14-34, shall comply with the following:
(1) Each other mineral upon which an exemption under sections 4 through 7 of this rule, this section, and sections 9 through 12 of this rule is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonable foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the standard in this subdivision.
(2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.
(Natural Resources Commission; 312 IAC 25-2-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3430, eff Dec 1, 2001)

312 IAC 25-2-9 Exemption for coal extraction incidental to the extraction of other minerals; conditions of exemption and right of inspection and entry
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 9. A person conducting activities covered by sections 4 through 7 of this rule, this section, and sections 10 through 12 of this rule shall do the following:
(1) Maintain on-site, or at other locations available to the director, information necessary to verify the exemption, including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the director.
(2) Notify the director upon the completion of the mining operation or permanent cessation of all coal extraction activities.
(3) Conduct operations in accordance with the approved application, or, if authorized to extract coal under section 5(b) or 5(e)(3) of this rule, before submittal or approval of an exemption application, under the standards of sections 4 through 8 of this rule, this section, and sections 10 through 12 of this rule.
(4) The director shall have the right to conduct inspections of any operation claiming an exemption under section 8 of this rule.
(5) The director shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials.
(6) The director may, at reasonable times and without delay, have access to and copy any records relevant to the exemption.
(7) The director shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.
(8) No search warrant is required with respect to any activity required under subdivisions (4) through (7), except that a search warrant may be required for entry into a building.
(Natural Resources Commission; 312 IAC 25-2-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3431, eff Dec 1, 2001)

312 IAC 25-2-10 Exemption for coal extraction incidental to the extraction of other minerals; stockpiling of minerals
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 10. (a) Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity, or use:
(1) up to an amount equaling a twelve (12) month supply of the coal required for future sale, transfer, or use, as calculated, based upon average annual sales, transfer, and use from the mining area over the two (2) preceding years; or
(2) for a mining area where coal has been extracted for a period of less than two (2) years, up to an amount that would represent a twelve (12) month supply of the coal required for future sales, transfer, or use, as calculated, based on the average amount of coal sold, transferred, or used each month.
(b) The following requirements shall be for the purposes of determining other minerals:
(1) The director shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of sections 4 through 9 of this rule, this section, and sections 11 and 12 of this rule if the:
(A) operator fails to maintain adequate and verifiable records of the mining area of origin or the disposition of stockpiles; or
(B) disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(2) The director may allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of sections 4 through 9 of this rule, this section, and sections 11 and 12 of this rule, only if both of the following are satisfied:

(A) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices.

(B) Except as provided in subdivision (3), the stockpiled other minerals do not exceed a twelve (12) month supply of the mineral required for future sales as approved by the director on the basis of the exemption application.

(3) The director may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve (12) month limit established in subdivision (2) if the operator can demonstrate to the director's satisfaction that the additional tonnage is required to meet future business obligations of the operator. A legally binding agreement for the future delivery of the minerals may be used to make this demonstration.

(4) The director may periodically revise the other mineral stockpile tonnage limits under the criteria established by subdivisions (2) and (3) based on additional information available to the director.

(Natural Resources Commission; 312 IAC 25-2-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3431, eff Dec 1, 2001)

312 IAC 25-2-11 Exemption for coal extraction incidental to the extraction of other minerals; revocation and enforcement

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3-7; IC 14-34; 30 CFR 702.17

Sec. 11. (a) The director shall conduct an annual compliance review of the mining area, utilizing the annual report submitted under section 12 of this rule, an on-site inspection, and any other information available to the director.

(b) If the director has reason to believe that a specific mining area was not exempt under the provisions of sections 4 through 10 of this rule, this section, and section 12 of this rule at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the director shall notify the operator that the exemption may be revoked and the reasons therefor. The exemption will be revoked unless the operator demonstrates to the director, within thirty (30) days, that the mining area in question should continue to be exempt.

(c) The following shall apply concerning revocation of an exemption:

(1) If the director finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the director shall revoke the exemption and immediately notify the operator and any intervenors. If a decision is made not to revoke an exemption, the director shall immediately notify the operator and the intervenors, if any.

(2) Any adversely affected person may request administrative review of a decision on whether to revoke an exemption within thirty (30) days of notification of such decision in accordance with IC 4-21.5-3-7.

(3) A petition for administrative review filed under subdivision (2) shall not suspend the effect of a decision on whether to revoke an exemption.

(d) The following are requirements for operators:

(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of this article that occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows, or should know, that such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of this article that occurred during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of this article with regard to conditions, areas, and activities existing at the time of revocation or denial.

(Natural Resources Commission; 312 IAC 25-2-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3432, eff Dec 1, 2001)

312 IAC 25-2-12 Exemption for coal extraction incidental to the extraction of other minerals; reporting requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12. (a) Following approval by the director of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the director containing the information specified in subsections (c) and (d).

(b) The report shall be filed no later than thirty (30) days after the end of the twelve (12) month period as determined under

the cumulative measurement period.

(c) The information in the report shall cover the following:

(1) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve (12) month period.

(2) The cumulative production of coal and other minerals, and the cumulative revenue derived from coal and other minerals.

(d) For each period and mining area covered by the report, the report shall specify the following:

(1) The number of tons of extracted coal sold in bona fide sales, and the total revenue derived from the sales.

(2) The number of tons of coal extracted and used or transferred by the operator or related entity, and the estimated total fair market value of the coal.

(3) The number of tons of coal stockpiled.

(4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales, and total revenue derived from the sales.

(5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity, and the estimated total fair market value of the minerals.

(6) The number of tons of other minerals removed and stockpiled by the operator.

(Natural Resources Commission; 312 IAC 25-2-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3432, eff Dec 1, 2001)

Rule 3. Areas Unsuitable for Mining

312 IAC 25-3-1 Prohibitions; limitations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 1. Subject to valid existing rights, no surface coal mining operation shall be conducted on any of the following areas after date of enactment of IC 14-34 unless those operations existed on August 3, 1977:

(1) 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 study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) or study rivers or study river corridors established in any guidelines pursuant to that act, and National Recreation Areas designated by act of Congress.

(2) 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 finds the following:

(A) There are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations.

(B) Surface operations and impacts are incident to an underground coal mine.

(3) On any lands where mining will adversely affect any publicly owned park or any place included in the National Register of Historic Places or the Indiana state register of historic sites and structures or natural landmarks included in the National Register unless approved jointly by the director and the federal, state, or local agency with jurisdiction over the park or place.

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

(A) Where mine access roads or haulage roads join such right-of-way line.

(B) Where the director allows the public road to be relocated, or the area affected to be within one hundred (100) feet of such road, after:

(i) public notice and opportunity for a public hearing under section 2 of this rule; and

(ii) making a written finding that the interests of the affected public and landowners will be protected.

(5) Within three hundred (300) feet measured horizontally from any occupied dwelling unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than three hundred (300) feet.

(6) Within three hundred (300) feet measured horizontally of the following:

(A) Any public building.

(B) School.

(C) Church.

(D) Community or institutional building.

(E) Public park.

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

(8) That will violate any existing local zoning ordinances.

(Natural Resources Commission; 312 IAC 25-3-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3433, eff Dec 1, 2001)

312 IAC 25-3-2 Procedures

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-18

Sec. 2. (a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the director shall review the application to determine whether surface coal mining operations are limited or prohibited under section 1 of this rule on the lands that would be disturbed by the proposed operations.

(b) If the proposed operation is located on any land listed in section 1(1), 1(6), 1(7), or 1(8) of this rule, the director shall reject the application if:

(1) the applicant had no valid existing rights for the area on August 3, 1977; or

(2) the operation did not exist on August 3, 1977.

(c) If the director is unable to determine whether the proposed operation is located within the boundaries of any of the lands in section 1(1), 1(6), 1(7), or 1(8) of this rule, the director 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 director may, if requested by an appropriate agency, extend the thirty (30) day response period set forth in this subsection by an additional thirty (30) days. If no response is received within the thirty (30) day period set forth in this subsection, or within sixty (60) days if an extension is granted under this subsection, the director may make the necessary determinations based upon the information available.

(d) If the proposed operation includes federal lands within the boundaries of any national forest and the applicant seeks a determination that mining is permissible under section 1(2) of this rule, the applicant shall also submit a permit application to the regional director for processing.

(e) If the proposed mining operation is to be conducted within one hundred (100) feet measured horizontally of the outside right-of-way line of a public road (except where mine access roads or haulage roads join the right-of-way line) or where the applicant proposes to relocate a public road, the director shall perform the following:

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

(2) Provide an opportunity for a public hearing in the locality of the proposed mining operations to determine if the interests of the public and affected landowners will be protected.

(3) Provide notice of the public hearing in a newspaper of general circulation in the affected locale at least two (2) weeks before the hearing, if a hearing is requested.

(4) Make a written finding upon information received at the public hearing within thirty (30) days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

(f) If the proposed surface coal mining operations would be conducted within three hundred (300) feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling consenting to the operation within a closer distance of the dwelling as specified in the waiver. The waiver must be made knowingly and separate from a lease or deed unless the lease or deed contains an explicit waiver. A waiver obtained by the applicant from the owner of an occupied dwelling before August 3, 1977, to mine within three hundred (300) feet of the occupied dwelling satisfies this subsection.

(g) A waiver obtained under subsection (f) is effective against a subsequent purchaser if the subsequent purchaser had actual or constructive knowledge of the waiver at the time of the purchase. Constructive knowledge is established if:

(1) the waiver is properly filed in the public records under Indiana law; or

(2) mining took place inside the three hundred (300) foot limit before the date of purchase.

(h) If the proposed surface coal mining operations will adversely affect any public park or any place included in the National Register of Historic Places, the Indiana state register of historic sites and structures, or natural landmarks included in the national register, the director shall transmit to the federal, state, or local agency with jurisdiction over the park or national register or state register place, a copy of the completed permit application containing the following:

(1) A request for that agency's approval or disapproval of the operations.

(2) A notice to the appropriate agency that it has thirty (30) days from receipt of the request in which to respond. The director, upon request by the appropriate agency, may grant an extension to the thirty (30) day period of an additional thirty (30) days. Failure to interpose an objection within thirty (30) days (or within an extended period granted under this subdivision) constitutes an approval of the proposed permit.

(i) If subsection (h) applies, a permit for surface coal mining operations shall not be issued unless jointly approved by all affected agencies.

(j) A director who determines that a surface coal mining operation is not prohibited under IC 14-34-18, this section, and section 1 of this rule may designate the lands unsuitable for all or certain types of surface coal mining operations according to a petition filed under sections 3 through 12 of this rule.

(k) A determination by the director that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on August 3, 1977, is subject to review under IC 14-34 and IC 4-21.5. A determination of these issues by the Secretary of the United States Department of the Interior concerning any federal lands or under a federal program is subject to review under 30 CFR 775.11(c) and 30 CFR 775.13. *(Natural Resources Commission; 312 IAC 25-3-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3433, eff Dec 1, 2001)*

312 IAC 25-3-3 Criteria

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 3. (a) Upon petition, an area shall be designated as unsuitable for all or certain types of surface coal mining operations if the director determines that reclamation is not technologically and economically feasible under IC 14-34 and this article.

(b) Upon petition, an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations if the operations will:

(1) be incompatible with existing state or local land use plans or programs;

(2) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long range productivity of water supply or food or fiber products; or

(4) affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(Natural Resources Commission; 312 IAC 25-3-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3434, eff Dec 1, 2001)

312 IAC 25-3-4 Land exempt from designation

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 4. Section 3 of this rule, this section, and section 5 of this rule do not apply to the following:

(1) Land on which surface coal mining operations were being conducted on August 3, 1977.

(2) Land covered by a permit issued under IC 14-34.

(3) Land where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

(Natural Resources Commission; 312 IAC 25-3-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3435, eff Dec 1, 2001)

312 IAC 25-3-5 Exploration

Authority: IC 14-34-2-1
Affected: IC 14-34-18

Sec. 5. Designation of any area as unsuitable for all or certain types of surface coal mining operations under IC 14-34-18 and this rule does not prohibit coal exploration operations in the area if conducted in accordance with IC 14-34, this article, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the director under 312 IAC 25-4-9 through 312 IAC 25-4-15, to ensure that exploration does not interfere with any value

for which the area has been designated unsuitable for surface coal mining. *(Natural Resources Commission; 312 IAC 25-3-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3435, eff Dec 1, 2001)*

312 IAC 25-3-6 Procedures for petition

Authority: IC 14-34-2-1
Affected: IC 14-34-18

Sec. 6. (a) A person having an interest, which is or may be adversely affected, has the right to petition the director to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

(b) A complete petition for designation shall include the following:

(1) The petitioner's name, address, and telephone number.

(2) An identification of the petitioned area, including its location and size.

(3) An identification of the petitioner's interest that is or may be adversely affected by surface coal mining operations.

(4) Allegations of fact and supporting evidence that tend to establish that the area is unsuitable for all or certain types of surface coal mining operations.

(5) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources.

(c) A complete petition for termination shall include the following:

(1) The petitioner's name, address, and telephone number.

(2) An identification of the petitioned area, including its location and size.

(3) An identification of the petitioner's interest that is or may be adversely affected by the continuation of the designation.

(4) Allegations of fact, with supporting evidence, not contained in the record of the proceedings in which the area was designated unsuitable, that tend to establish that the designation should be terminated because the reasons for the designation under IC 14-34-18 have been significantly diminished or no longer exist.

(d) The director may request that a petitioner under this section provide other supplementary information that is readily available. *(Natural Resources Commission; 312 IAC 25-3-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3435, eff Dec 1, 2001)*

312 IAC 25-3-7 Initial processing, record keeping, and notification

Authority: IC 14-34-2-1
Affected: IC 5-14-3; IC 14-34

Sec. 7. (a) Within thirty (30) days of receipt of a petition, the director shall determine whether the petition is complete, except that for good cause the director may extend the time for making these determinations for an additional fifteen (15) days.

(b) As used in this section, "complete for a designation or termination petition" means that the information required under section 6(b) or 6(c) of this rule has been provided.

(c) The director shall determine whether any identified coal resources exist in the area covered by the petition without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, the petition shall be returned to the petitioner with a statement of the findings.

(d) Any petitions received after the close of the public comment period on a permit application relating to the same permit area shall not prevent the director from issuing a decision on that permit application. The director may return any petition received after the close of the public comment period to the petitioner with a statement why the petition cannot be considered. As used in this section, "close of the public comment period" means the close of any informal conference held under 312 IAC 25-4-112, or, if no conference is requested, at the close of the period for filing written comment and objections under 312 IAC 25-4-110 through 312 IAC 25-4-111.

(e) When the petition is determined complete, the director shall immediately accept the petition for further processing and advise the petitioner of this finding by certified mail.

(f) When the director finds that the petition is generally complete, but that it does not meet this test for portions of the petitioned area, the petition may be accepted in part for further processing in accordance with the procedures set forth in subsection (g). The director shall advise the petitioner of those portions of the petitioned area that are not accepted for further processing, with a written statement of reasons.

(g) The director may reject petitions for designations or terminations of designations that are frivolous, or were previously and unsuccessfully proposed for designation, if it is determined that the new petition presents no new allegations of facts. The director

shall return the petition to the petitioner, with a statement of findings and a reference to the record of the previous designation proceedings where the facts of a previous and unsuccessful petition were considered. Once the requirements of section 6 of this rule are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the director pursuant to the procedures of section 6 of this rule, this section, and sections 8 through 12 of this rule.

(h) The director shall return to the petitioner any petition that is found to be incomplete or frivolous, together with a written statement of reasons for the determination and the categories of information needed to make the petition acceptable for resubmittal.

(i) The director shall notify the person who submits a petition of any application for a permit received that proposes to include any area covered by the petition.

(j) If the petition covers an area for which designation has previously been considered and rejected, the director shall determine if the petition presents significant new allegations of facts with evidence that tends to establish the allegations. If the petition does not contain the allegations and evidence, the petition shall not be considered, but shall be returned to the petitioner with the director's written findings and a reference to the record of the previous proceedings in which the issues raised by the petitioner were considered.

(k) Within three (3) weeks after accepting the petition for further processing, the director shall circulate copies of the petition to, and request submission of relevant information from, the following:

(1) Other interested governmental agencies.

(2) The petitioner.

(3) Intervenors.

(4) Persons with an ownership interest of record in the property.

(5) Other persons known to the director to have an interest in the property.

(l) Within five (5) weeks after accepting the petition for further processing, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two (2) consecutive weeks in the locale of the area covered by the petition, in a newspaper of general circulation in Marion County, and in the Indiana Register.

(m) Until three (3) days before the director holds a hearing under this rule, any person may intervene in the proceeding by filing the following:

(1) Allegations of facts.

(2) Supporting evidence.

(3) A short statement identifying the petition to which the allegations pertain.

(4) The intervenor's name, address, and telephone number.

(n) Beginning immediately after a complete petition is filed, the director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the director. The director shall make the record available for public inspection under IC 5-14-3 at:

(1) a central location in or near the area where the land petitioned is located; and

(2) the Indianapolis office of the division of reclamation.

(Natural Resources Commission; 312 IAC 25-3-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3435, eff Dec 1, 2001)

312 IAC 25-3-8 Hearing requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 8. (a) Within ten (10) months after the receipt of a complete petition, the director shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The director may subpoena witnesses as necessary. A record of the hearing shall be made and preserved, and:

(1) no party shall have the burden of proof or persuasion; and

(2) all:

(A) relevant parts of the data base and inventory system; and

(B) public comment received during the public comment period set by the director or at the hearing;

shall be included in the record and considered by the director in deciding the petition.

(b) The director shall give notice of the date, time, and location of the hearing to:

(1) local, state, and federal agencies that may have an interest in the decision on the petition;

(2) the petitioner and the intervenors; and

(3) any person known by the director to have a property interest in the area covered by the petition.
Notice of the hearing shall be sent by certified mail to petitioners and intervenors and by regular mail to other persons involved in the proceedings and postmarked not less than thirty (30) days before the scheduled date of the hearing.

(c) The director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two (2) consecutive weeks and once during the week prior to the scheduled date of the hearing in the locale of the area covered by the petition.

(d) The director may consolidate in a single hearing the hearings required for each of several petitions that relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the director shall prepare a detailed statement, using existing and available information on the following:

(1) The potential coal resources of the area.

(2) The demand for coal resources.

(3) The impact of such designation on the following:

(A) The environment.

(B) The economy.

(C) The supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration. *(Natural Resources Commission; 312 IAC 25-3-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3436, eff Dec 1, 2001)*

312 IAC 25-3-9 Decision

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 9. (a) The director may decide to designate the petitioned land areas, in whole or in part, not to designate the petitioned land areas, or to place conditions on future operations in all or part of the petitioned area that would successfully mitigate the impacts of such operations.

(b) In reaching a decision, the director shall use the following:

(1) Information contained in the data base and inventory system established and maintained under section 10 of this rule.

(2) Information provided by other governmental agencies.

(3) The detailed statement prepared under section 8(e) of this rule.

(4) Any other relevant information submitted during the comment period.

(c) A final written decision shall be issued by the director, including a statement of the reasons for the director's decision, within sixty (60) days of completion of the public hearing, or, if no public hearing is held, then within twelve (12) months after receipt of the petition accepted for further processing. The director shall simultaneously send the decision by:

(1) certified mail to the petitioner and intervenors; and

(2) regular mail to:

(A) every other party to the proceeding; and

(B) the regional director or the Office of Surface Mining official in charge of the operations in Indiana.

(d) The decision of the director, with respect to a petition, or the failure of the director to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with state law and this article. *(Natural Resources Commission; 312 IAC 25-3-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3437, eff Dec 1, 2001)*

312 IAC 25-3-10 Data base and inventory system requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 10. (a) The director shall develop a data base and inventory system that will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The director shall include in the system information relevant to the criteria in section 3 of this rule, including, but not limited to, the following:

(1) Information received from the United States Fish and Wildlife Service.

(2) The state historic preservation officer.
(3) The agency administering Section 127 of the Clean Air Act as amended (42 U.S.C. 7470 et seq.).
(c) The director shall add to the data base and inventory system information:
(1) on potential coal resources of the state, demand for those resources, the environment, the economy, and the supply of coal, sufficient to enable the director to prepare the statements required by section 8(e) of this rule; and
(2) that becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.
(Natural Resources Commission; 312 IAC 25-3-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3437, eff Dec 1, 2001)

312 IAC 25-3-11 Public information
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 11. The director shall do the following:
(1) Make the information and data base system developed under section 10 of this rule available to the public for inspection free of charge and for copying at reasonable cost.
(2) Provide information to the public on the petition procedures necessary to have:
(A) an area designated as unsuitable for all or certain types of surface coal mining operations; or
(B) designations terminated and describe how the inventory and data base system can be used.
(Natural Resources Commission; 312 IAC 25-3-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)

312 IAC 25-3-12 Implementation; responsibility
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12. (a) The director shall not issue permits that are inconsistent with designations made under this article.
(b) The director shall maintain a map or other unified and cumulative record of areas designated as unsuitable for all or certain types of surface coal mining operations.
(c) The director shall make available to any person any information within its control regarding designations, including mineral or elemental content that is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal. *(Natural Resources Commission; 312 IAC 25-3-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)*

Rule 4. Permitting Procedures

312 IAC 25-4-1 Continued operation under interim permits
Authority: IC 14-34-2-1
Affected: IC 14-36-1

Sec. 1. (a) Except as provided in subsection (b), no person shall conduct surface coal mining and reclamation operations on and after March 29, 1983, unless that person has first obtained a permanent program permit from the director under section 3 of this rule.
(b) A person conducting surface coal mining operations under an interim permit issued or amended by the commission in accordance with the requirements of IC 14-36-1, as amended, P.L. 159, Acts of 1978 and P.L. 331, Acts of 1981 or under an interim permit, the expiration of which has been extended by the commission, may conduct those operations beyond the term of such permit and beyond the period prescribed in subsection (a), if:
(1) not later than two (2) months following the approval of the Secretary of the United States Department of the Interior of this program, a complete application for a permanent program permit is filed with the director;
(2) the commission has not yet rendered a decision with respect to such permanent program application; and
(3) the operations are conducted in compliance with all terms and conditions of the interim permit, P.L. 159, Acts of 1978 and P.L. 331, Acts of 1981.
(Natural Resources Commission; 312 IAC 25-4-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)

312 IAC 25-4-2 Permits and exploration applications; responsibilities
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 2. (a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with section 1 of this rule, this section, and sections 3 through 134 of this rule.

(b) Persons seeking to conduct exploration must first file the notice of intention or obtain approval of the director as required under sections 9 through 15 of this rule.

(c) Following the submission by the director of a regulatory program under 30 CFR, Subchapter C, the director shall provide to the applicant written format for permit applications. *(Natural Resources Commission; 312 IAC 25-4-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)*

312 IAC 25-4-3 General requirements for permits
Authority: IC 14-34-2-1
Affected: IC 14-34-3

Sec. 3. No person may open or develop a new or previously mined or abandoned site for surface coal mining operations within Indiana unless that person has first obtained a valid permit issued by the director under IC 14-34-3. *(Natural Resources Commission; 312 IAC 25-4-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3439, eff Dec 1, 2001)*

312 IAC 25-4-4 Compliance with permits
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 4. All persons shall conduct surface coal mining and reclamation operations under permits issued under IC 14-34 and this article, and shall comply with the terms and conditions of IC 14-34, this article, and the permit. *(Natural Resources Commission; 312 IAC 25-4-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3439, eff Dec 1, 2001)*

312 IAC 25-4-5 Permit applications; filing and deadlines
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 5. (a) Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file an application for a permit for those operations no later than one hundred eighty (180) days prior to the proposed commencement of such operations.

(b) An application for renewal of a permit shall be filed with the director at least one hundred twenty (120) days before the expiration of the permit involved.

(c) Any application for revision of a permit shall be filed with the director at least one hundred twenty (120) days before the date on which the permittee expects to revise surface coal mining or reclamation operations.

(d) Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a prior permit shall be filed with the director not later than thirty (30) days after that succession is approved by the director. *(Natural Resources Commission; 312 IAC 25-4-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3439, eff Dec 1, 2001)*

312 IAC 25-4-6 Permit applications; general requirements; format and contents
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 6. (a) An application for a permit to conduct surface coal mining and reclamation operations shall be filed in the format required by the director. The application must be complete and must include the following:

(1) For surface mining activities, all the applicable information required under sections 16 through 56 of this rule.

(2) For underground mining activities, all the information required under sections 57 through 97 of this rule.

(3) For special types of surface coal mining and reclamation operations, all the information required under sections 98 through 107 of this rule.

(b) Information set forth in an application must be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the director.

(c) All technical data submitted in an application shall be accompanied by the following:

(1) Names of persons or organizations that collected and analyzed the data.

(2) Dates of the collection and analyses.

(3) Descriptions of methodology used to collect and analyze the data.

(d) Technical analyses must be planned or directed by a professional qualified in the subject that is analyzed.

(e) An application shall state the name, address, and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the application for information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(f) An application must include maps and plans as provided in this subsection as follows:

(1) Maps submitted with an application must be presented in a consolidated format, to the extent possible, and shall include all types of information that are set forth on topographic maps of the United States Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the adjacent areas shall clearly show the lands and waters within those areas and shall be of an adequate scale to provide the appropriate information to the director.

(2) Maps and plans submitted with the application shall clearly show those portions of the permit area in which surface coal mining operations occurred prior to August 3, 1977.

(Natural Resources Commission; 312 IAC 25-4-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3439, eff Dec 1, 2001)

312 IAC 25-4-7 Permit applications; format and contents review

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 7. Each application for a surface coal mining and reclamation permit under a regulatory program shall be reviewed as to its completeness prior to formal review and shall include the following:

(1) This completeness review shall be completed not later than fifteen (15) working days after such permit is submitted.

(2) The director shall contact the applicant not later than five (5) working days after a permit is reviewed for completeness and shall state:

(A) which portions of the permit application are incomplete; and

(B) those conditions and information requirements necessary to complete the application.

(Natural Resources Commission; 312 IAC 25-4-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3440, eff Dec 1, 2001)

312 IAC 25-4-8 Verification of application

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 8. Applications for permits shall be verified, under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief. *(Natural Resources Commission; 312 IAC 25-4-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3440, eff Dec 1, 2001)*

312 IAC 25-4-9 Coal exploration; responsibilities

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 9. It is the responsibility of any person conducting or seeking to conduct coal exploration under a regulatory program to comply with this section and sections 10 through 15 of this rule. *(Natural Resources Commission; 312 IAC 25-4-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3440, eff Dec 1, 2001)*

312 IAC 25-4-10 General requirements; coal exploration

Authority: IC 14-34-2-1
Affected: IC 14-34; IC 14-38-2

Sec. 10. (a) General requirements for coal exploration activities shall be as follows:

(1) Any person who conducts coal exploration activities for the purpose of determining the location, quantity, or quality of a coal seam shall comply with 312 IAC 25-6-1 through 312 IAC 25-6-4.

(2) All exploration holes, wells, or other exposed openings created during exploration must meet the requirements of 312 IAC 25-6-8, 312 IAC 25-6-9, and 312 IAC 25-6-10.

(3) Any person desiring to drill exploratory holes to a depth in excess of two hundred (200) feet shall first file a written application for a permit with the division of oil and gas, department of natural resources, consistent with rules promulgated pursuant to IC 14-38-2.

(b) Any person who intends to conduct coal exploration by methods other than core drilling or the drilling of boreholes shall, prior to conducting such exploration activities, file an application and obtain the written approval of the director. The application shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The name, address, and telephone number of the representative of the applicant who will be present at and responsible for conducting the exploration activities.

(3) A brief narrative description of the area in which the applicant intends to conduct coal exploration activity, including quarter, quarter section, township, range, and county of the exploration area.

(4) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(5) A description of the measures to be used to comply with the applicable requirements of 312 IAC 25-6-1 through 312 IAC 25-6-4.

(6) A United States Geological Survey topographic map of the proposed exploration area at a scale of 1:24,000 or larger, showing:

(A) existing and proposed roads and access routes; and

(B) existing lakes, ponds, streams, and drainage features.

(c) Any person desiring to drill an exploratory hole shall do the following:

(1) Meet the applicable performance standards set forth in 312 IAC 25-6-1 through 312 IAC 25-6-4.

(2) Notify the director, in writing, on an annual basis that he or she intends to conduct such exploration activity, including:

(A) a description of the exploration area;

(B) the period of supposed exploration;

(C) the practices proposed to be followed to protect the environment from adverse impacts; and

(D) the name, address and telephone number of the representative of the person who will be present and responsible for conducting the exploration activities.

(3) Keep a record of each hole drilled, including the following:

(A) The date drilled.

(B) The date plugged.

(C) The method of sealing or casing the drill hole.

(D) The location of the drill hole.

(4) Information recorded pursuant to subdivision (3) shall be retained by the operator for inspection by the department for a period of three (3) years; however, such information shall be treated as confidential and will not be subject to public inspection.

(d) The director shall, except as otherwise provided in subsection (c)(4) and section 15 of this rule, place the notices submitted pursuant to subsection (c)(2) on public file and make them available for public inspection and copying. *(Natural Resources Commission; 312 IAC 25-4-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3440, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-4-11 Exploration of more than 250 tons; special requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 11. (a) Each application for approval of exploration operations removing more than two hundred fifty (250) tons of coal shall include the following, in addition to information required under section 10 of this rule:

(1) A statement of why extraction of more than two hundred fifty (250) tons of coal is necessary for exploration.

(2) A narrative description of the proposed exploration area, cross-referenced to a United States Geological Survey topographic map to a scale of not less than 1:24,000.

(3) An exploration and reclamation operations plan, including the following:

(A) A narrative description of the following:

(i) The proposed exploration area, cross-referenced to the map required under subdivision (5).

(ii) Vegetative cover.

(iii) The distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.).

(iv) Cultural, archaeological, or historic resources listed, or eligible for listing, on the National Register of Historic Places or the Indiana state register of historic sites and structures, known archaeological resources located within the proposed exploration area, and any other information that the director may require regarding known or unknown cultural, archaeological, or historic resources consistent with section 27 or 68 of this rule.

(B) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the following:

(i) The types and uses of equipment.

(ii) Drilling.

(iii) Blasting.

(iv) Road or other access route construction.

(v) Excavated earth or other debris.

(C) The estimated amount of coal to be removed and a description of the methods to be used to determine this amount.

(4) 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. 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.

(5) A map at a scale of 1:24,000 or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show the following:

(A) Existing roads, occupied dwellings, and pipelines.

(B) Proposed location of trenches, roads, and other access routes and structures to be constructed.

(C) The location of land excavations to be conducted.

(D) Water or coal exploratory holes and wells to be drilled or altered.

(E) Earth or debris disposal areas.

(F) Existing bodies of surface water.

(G) Historic, topographic, geologic, cultural, and drainage features.

(H) Habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.).

(b) Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within five (5) days after submitting the application for approval of exploration, the applicant shall provide public notice of the filing of an administratively complete application with the director in a newspaper of general circulation published in the county of the proposed exploration area.

(2) The public notice shall contain the following information:

(A) The name and business address of the person seeking approval.

(B) The date of filing of the application.

(C) The address of the director at which written comments on the application may be submitted.

(D) The closing date of the comment period (which shall be thirty (30) days after the filing of the application).

(E) A description of the general area of exploration.

(3) Any person with an interest that is or may be adversely affected shall have the right to file written comments on the application within the comment period specified in subdivision (2).

(Natural Resources Commission; 312 IAC 25-4-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3441, eff Dec 1, 2001)

312 IAC 25-4-12 Exploration of more than 250 tons; approval or disapproval
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12. The director shall approve a complete application filed in accordance with sections 9 through 11 of this rule, this section, and sections 13 through 15 of this rule after making a written finding that the applicant has demonstrated the exploration and reclamation described in that application will be conducted in accordance with IC 14-34, the coal exploration performance standards in 312 IAC 25-6-1 through 312 IAC 25-6-4, and sections 9 through 11 of this rule, this section, and sections 13 through 15 of this rule. *(Natural Resources Commission; 312 IAC 25-4-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-4-13 Application approval or disapproval; public notice
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 13. (a) The director shall notify the applicant and any appropriate county planning agency, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall state the reason for disapproval. The director shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the vicinity of the proposed exploration site or sites.

(b) Any person with an interest who is or may be adversely affected by a decision of the director under subsection (a) shall have the opportunity for administrative and judicial review as set forth in sections 122 and 123 of this rule. *(Natural Resources Commission; 312 IAC 25-4-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001)*

312 IAC 25-4-14 Coal exploration violations
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 14. Any person who conducts any coal exploration in violation of:
(1) IC 14-34-9;
(2) sections 9 through 13 of this rule, this section, and section 15 of this rule; or
(3) 312 IAC 25-6-1 through 312 IAC 25-6-4;
shall be subject to IC 14-34-15 and IC 14-34-16. *(Natural Resources Commission; 312 IAC 25-4-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001)*

312 IAC 25-4-15 Public availability of information
Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34

Sec. 15. (a) Except as provided in subsection (b), all information submitted to the director under sections 9 through 14 of this rule and this section will be made available for public inspection and copying (at reasonable charge) at the reclamation field office of the division of reclamation.

(b) The director will not make information available for public inspection if the person submitting the information requests, in writing, at the time of submission, that the information not be disclosed because the information contains trade secrets or proprietary commercial information. If the director determines that the information is not confidential, the person may request a hearing in the hearing officer's chambers within the time limitations set forth in IC 4-21.5. The record of this hearing will be sealed. Until such time as the hearing officer renders a written decision, the time for instituting judicial review has expired and unless otherwise ordered by a court of competent jurisdiction, such information shall only be disclosed to the hearing officer, appropriate employees in the department, and the person requesting the hearing. Other interested persons becoming parties to the proceeding shall not have access to such information until the period of judicial review has expired unless otherwise ordered by a court of competent jurisdiction. *(Natural Resources Commission; 312 IAC 25-4-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001)*

312 IAC 25-4-16 Application; applicability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 16. This section and sections 17 through 25 of this rule apply to any person who applies for a permit to conduct surface mining activities. *(Natural Resources Commission; 312 IAC 25-4-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3443, eff Dec 1, 2001)*

312 IAC 25-4-17 Surface mining permit applications; identification of interests

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 778.13

Sec. 17. (a) An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a:
- (A) corporation;
- (B) partnership;
- (C) single proprietorship;
- (D) association; or
- (E) other business entity.

(2) The name, address, telephone number, and, as applicable, the Social Security number and employer identification number of the following:
- (A) The applicant.
- (B) The applicant's resident agent.
- (C) The person who will pay the abandoned mine land reclamation fee.

(b) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94, the following information shall be submitted with the application, where applicable:

(1) The person's name, address, Social Security number, and employer identification number.

(2) 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, the date the position was assumed, and, if submitted under 312 IAC 25-7-5, the date of departure from the position.

(4) Each additional name and identifying number, including the following:
- (A) The employer identification number.
- (B) The federal or state permit number.
- (C) The MSHA number with the 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.

(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.

(c) 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" in 312 IAC 25-1-94, the following information concerning the operation shall be submitted with the application:

(1) The name, address, and identifying numbers, including the following:
- (A) The employer identification number.
- (B) The federal or state permit number and the regulatory authority.
- (C) The MSHA number with the date of issuance.

(2) The ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(d) 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 shall be submitted with the application.

(e) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area shall be submitted with the application.

(f) The MSHA numbers for all mine-associated structures that require MSHA approval shall be submitted with the application.

(g) 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 shall be submitted with the application. If requested by the applicant, any information required by this section that is not on public file under Indiana law shall be held in confidence by the director as provided under section 15(b) of this rule.

(h) After an applicant is notified that the 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).

(i) The applicant shall submit the information required by this section and section 18 of this rule in any prescribed format that is issued by the commission, which shall conform to the format requirements of the Office of Surface Mining Reclamation and Enforcement. *(Natural Resources Commission; 312 IAC 25-4-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3443, eff Dec 1, 2001, except subsections (d), (e), and (f); filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, eff Jan 1, 2005)*

312 IAC 25-4-18 Surface mining permit applications; compliance information

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 778.14

Sec. 18. (a) Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or

(B) forfeited a performance bond or similar security deposited in lieu of bond.

(2) A brief explanation of the facts involved in any such suspension, revocation, or forfeiture referred to in subdivision (1), including the following:

(A) The identification number and date of issuance of the permit, and the date and amount of bond or similar security.

(B) The identification of the authority that suspended or revoked the permit or forfeited the bond, and the stated reasons for the action.

(C) The current status of the permit, bond, or similar security involved.

(D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

(E) The current status of the proceedings required in clause (D).

(3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns and controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:

(A) Any identifying numbers for the operation, including the following:

(i) The federal or state permit number and MSHA number.

(ii) The dates of issuance of the violation notice and MSHA number.

(iii) The name of the person to whom the violation notice was issued.

(iv) The name of the issuing regulatory authority, department, or agency.

(B) A brief description of the violation alleged in the notice.

(C) 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 this subdivision to obtain administrative or judicial review of the violation.

(D) The current status of the proceedings and of the violation notice.

(E) The actions, if any, taken by any person identified in this subdivision to abate the violation.

(b) After an applicant is notified that the 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. *(Natural Resources Commission; 312 IAC 25-4-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3444, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-4-19 Surface mining permit applications; right of entry and operation information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 19. (a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall:

(1) identify the specific land to which the document pertains; and

(2) explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, the applications shall also provide any of the following for land 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 document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that, under applicable Indiana law, the applicant has the legal authority to extract the coal by those methods.

In lieu of copies of the consent, document, or other documentation required in this subsection, the applicant may provide an affidavit, signed by a responsible officer of the applicant, stating, under oath, that the information required does in fact exist and is available for inspection by any person at a given location set forth in that affidavit.

(c) Nothing in this section will be construed to afford the department the authority to adjudicate property title disputes. *(Natural Resources Commission; 312 IAC 25-4-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3444, eff Dec 1, 2001)*

312 IAC 25-4-20 Surface mining permit applications; relationship to areas designated unsuitable for mining

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 20. (a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 312 IAC 25-3-6 through 312 IAC 25-3-12 or under study for designation in an administrative proceeding under 312 IAC 25-3-6 through 312 IAC 25-3-12.

(b) If an applicant claims the exemption in section 115 of this rule, the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 1, 1977, concerning the proposed surface mining activities.

(c) Subject to valid existing rights, if an applicant proposes to conduct surface mining activities within three hundred (300) feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 312 IAC 25-3-1(5). *(Natural Resources Commission; 312 IAC 25-4-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)*

312 IAC 25-4-21 Surface mining permit applications; permit term information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 21. (a) Each permit shall be issued for a fixed term not to exceed five (5) years, except where the director grants a longer fixed period as provided in this section.

(b) Each application shall state the following:

(1) The anticipated starting and termination dates of the surface mining activities.

(2) The anticipated number of acres of land to be affected annually and over the total life of the permit.

(c) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information required by section 119 of this rule. *(Natural Resources Commission; 312 IAC 25-4-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)*

312 IAC 25-4-22 Surface mining permit applications; personal injury and property damage insurance information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 22. Each permit application shall contain a certificate of liability insurance consistent with 312 IAC 25-5. *(Natural Resources Commission; 312 IAC 25-4-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)*

312 IAC 25-4-23 Surface mining permit applications; identification of other safety and environmental licenses and permits

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 23. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by the following:

(1) The type of permit or license.

(2) The name and address of issuing authority.

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses.

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

(Natural Resources Commission; 312 IAC 25-4-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)

312 IAC 25-4-24 Surface mining permit applications; identification of library where application on file

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 24. Each application shall identify by name and address the county library where the applicant will simultaneously file a copy of the application for public inspection under section 109(d) of this rule. *(Natural Resources Commission; 312 IAC 25-4-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001)*

312 IAC 25-4-25 Surface mining permit applications; newspaper advertisement; proof of publication

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 25. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application, not later than four (4) weeks after the last date of publication required by section 109(a) of this rule. *(Natural Resources Commission; 312 IAC 25-4-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001)*

312 IAC 25-4-26 Surface mining permit applications; environmental resources information; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 26. Each permit application shall include a description of the existing premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities. *(Natural Resources Commission; 312 IAC 25-4-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001)*

312 IAC 25-4-27 Surface mining permit applications; environmental resources information; cultural, historic, and archaeological resources

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 27. (a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources in or within one thousand (1,000) feet for the proposed permit area. The description shall be based on information obtained from the division of historic preservation and archaeology.

(b) The director shall require the applicant to submit additional information to describe and identify the nature of cultural, historic, and archaeological resources if the director determines that sufficient information is not available from the division of historic preservation and archaeology to identify the nature of these resources. The sources of the information shall include each of the following:

(1) State and local cultural, historic, and archaeological preservation agencies.

(2) Research organizations.

(3) Institutions that maintain records of cultural, historic, and archaeological resources.

(c) If, based upon the written comments of the division of historic preservation and archaeology and other sources, the director determines there is a substantial likelihood that there are undiscovered sites containing cultural, historic, or archaeological resources that would be eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures that would be adversely affected by surface coal mining operations, the director may require the applicant to identify and evaluate the nature of these resources through any of the following:

(1) The collection of additional information.

(2) The conduct of field investigations.

(3) Other appropriate analyses.

(d) The director may require an applicant to evaluate the significance of an important site that contains cultural, historic, or archaeological resources identified in this section through any of the following:

(1) The evaluation of records of research institutions and the division of historic preservation and archaeology.

(2) The evaluation of written reports.

(3) Field investigations.

(4) Other appropriate investigations.

(e) The identification and evaluation of cultural, historic, and archaeological resources under subsection (b), (c), or (d) shall be conducted according to 312 IAC 21-3. *(Natural Resources Commission; 312 IAC 25-4-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001)*

312 IAC 25-4-28 Surface mining permit applications; environmental resources information; hydrology

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 28. (a) Each application shall contain a description of the hydrology, including water quantity and water quality for:

(1) the permit area;

(2) the adjacent area; and

(3) the general area.

(b) Information on hydrology and water quality and quantity outside the proposed permit area and within the general area shall be provided by the director from such areas or from areas with similar hydrologic conditions.

(c) The applicant shall submit additional information for the permit area as part of the permit application as required by the director and according to this section and sections 30 through 33 of this rule.

(d) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. *(Natural Resources Commission; 312 IAC 25-4-28; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3447, eff Dec 1, 2001)*

312 IAC 25-4-29 Surface mining permit applications; environmental resources information; fish and wildlife

Authority: IC 14-34-2-1
Affected: IC 14-22-34; IC 14-34

Sec. 29. (a) Each application shall include information on fish and wildlife species and their habitats present or likely to be present in the permit area and adjacent area, based on published literature, information available from state and federal fish and wildlife agencies, and any site-specific studies required under subsection (b).

(b) Site-specific information shall be required by the director as to respective species or habitats when the permit area or adjacent area is likely to include any of the following:

(1) Species of plants or animals listed or proposed to be listed as endangered or threatened or critical habitats designated by the Secretary of the United States Department of the Interior under the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

(2) Species listed by the director as endangered under IC 14-22-34.

(3) Habitats of unusually high value for fish and wildlife, such as the following:

(A) Important streams.

(B) Wetlands and riparian areas.

(C) Migration routes.

(D) Reproduction areas.

(E) Areas offering special shelter or protection.

(Natural Resources Commission; 312 IAC 25-4-29; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3447, eff Dec 1, 2001)

312 IAC 25-4-30 Surface mining permit applications; environmental resources information; geology description

Authority: IC 14-34-2-1
Affected: IC 14-22-34; IC 14-34

Sec. 30. (a) Each application shall contain geologic information in sufficient detail to assist in determining each of the following:

(1) The probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface water and ground water monitoring is necessary.

(2) All potentially acid-forming or toxic-forming strata down to and including the stratum immediately beneath the lowest coal seam to be mined.

(3) Whether reclamation as required by this article and IC 14-34 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) Geologic information shall include, at a minimum, all of the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. The description shall include the areal and structural geology of the permit and adjacent areas and other parameters that influence the required reclamation and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground waters. The description shall be based on the following:

(A) The cross sections, maps, and plans required by section 38 of this rule.

(B) The information obtained under subdivision (2) and subsection (c).

(C) Geologic literature and practices.

(2) Analyses of samples collected from test borings, drill cores, or fresh, unweathered, and uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined, which may be adversely impacted by mining. The analyses shall result in the following:

(A) Logs showing the lithologic characteristics, including physical properties and thickness of each stratum and location of ground water where occurring.

(B) Chemical analyses identifying those strata that may contain acid-forming, toxic-forming, or alkalinity-producing materials and to determine their content, except that the director may find that the analysis for alkalinity-producing materials is unnecessary.

(C) Chemical analyses of the coal seam for acid-forming or toxic-forming materials, including the total sulfur and pyretic sulfur, except that the director may find that the analysis of pyretic sulfur content is unnecessary.

(c) If determined to be necessary to protect the hydrologic balance or to meet the performance standards of this article, the director may require the collection analysis and description of geologic information in addition to that required by subsection (b).

(d) At the request of the applicant, the director may waive, in writing, requirements in whole or in part, of subsection (b)(2) as to a specific permit if that information is unnecessary because other reliable information is available. In any event, information provided by the applicant that pertains to physical or chemical properties of the coal shall remain confidential and not subject to public inspection. *(Natural Resources Commission; 312 IAC 25-4-30; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3447, eff Dec 1, 2001)*

312 IAC 25-4-31 Surface mining permit applications; environmental resources information; ground water

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 31. (a) Each application shall include the following ground water information for the permit area and the adjacent area:

(1) The location and extent of each aquifer that may be affected by the mining and the estimated level of the water table.

(2) The quality of subsurface water encountered.

(3) The location, usage, and ownership of existing wells, springs, and other ground water resources.

(4) The estimated recharge capacity of the ground water system in the permitted area using available information for such areas or for areas with similar hydrologic conditions.

(5) The approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(6) A description of the seasonal variation in water quantity and water quality in the permit and adjacent areas as follows:

(A) Baseline information on seasonal water levels.

(B) The following water quality parameters:

(i) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.

(ii) The pH in standard units.

(iii) Any required state water quality standards and federal United States Environmental Protection Agency effluent limitations.

(iv) Total iron.

(v) Total manganese.

(vi) Acidity and alkalinity.

(vii) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse ground water impacts.

(b) If the determination of the probable hydrologic consequences as required by section 47 of this rule 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 contamination of ground water or surface water supplies, the director shall require the applicant to provide information supplemental to that required under this section as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon any of the following:

(1) Drilling.

(2) Aquifer tests.

(3) Hydrogeologic analysis of the water-bearing strata.

(4) Flood flows.

(5) Analysis of other water quality or quantity characteristics.

(c) The application shall include a ground water monitoring plan based upon the probable hydrologic consequences determination required under section 47(c) of this rule and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide the following information:

(1) The monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in section 47(a) of this rule.

(2) The identification of the quantity and quality parameters to be monitored, sampling frequency, sampling procedures, and site locations.

(3) How the data may be used to determine the impacts of the operation upon the hydrologic balance.

(4) Specific water parameter information shall be monitored and data submitted to the director at least every three (3) months for each monitoring location. The required information shall include, at a minimum, the following:

(A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.

(B) The pH in standard units.

(C) Total iron.

(D) Total manganese.

(E) Water levels.

(5) Any additional monitoring information required by the director if it is necessary to evaluate potential adverse ground water impacts that are not addressed by the other monitoring information requirements of this subsection.

(6) If an applicant can demonstrate, by the use of the probable hydrologic consequences determination and other available information, that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer that significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the director.

(Natural Resources Commission; 312 IAC 25-4-31; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3448, eff Dec 1, 2001)

312 IAC 25-4-32 Surface mining permit applications; environmental resources information; surface water information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 32. (a) Surface water information shall include the following:

(1) The name and location of the surface stream or tributary that will receive drainage from the permit area.

(2) The location of any discharge into a surface water body.

(3) The location and ownership of all streams, lakes, ponds, springs, and similar surface water bodies within the proposed permit and adjacent areas.

(b) Surface water information shall include a description of the seasonal variation in water quantity and quality of perennial streams in the permit and adjacent areas as well as those streams or other water bodies in the adjacent area that will receive drainage from the permit area in terms of the following:

(1) Baseline information on seasonal flow rates.

(2) The following baseline water quality parameters:

(A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.

(B) Total suspended solids in milligrams per liter.

(C) The pH in standard units.

(D) Required state water quality standards and federal United States Environmental Protection Agency effluent limitations.

(E) Total iron.

(F) Total manganese.

(G) Acidity and alkalinity.

(H) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse surface water impacts.

(c) If the determination of the probable hydrologic consequences as required by section 47 of this rule 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 contamination of ground water or surface water supplies, the director shall require the applicant to provide information supplemental to that required under subsection (b) as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(d) The application shall include a surface water monitoring plan based upon the probable hydrologic consequences determination required under section 47(c) of this rule 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 postmined land uses and to the objectives for protection of the hydrologic balance as set forth in section 47 of this rule as well as the effluent limitations found at 40 CFR 434.

(1) The plan required by this subsection shall identify the following:
(A) The surface water quantity and quality parameters to be monitored.
(B) Sampling frequency and procedures.
(C) Site locations.
(D) A description of how the data may be used to determine the impacts of the operation upon the hydrologic balance.
(2) 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, the following shall be monitored:
(A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
(B) Total suspended solids.
(C) The pH in standard units.
(D) Total iron.
(E) Total manganese.
(F) Flow.
(3) For point source discharges, monitoring shall be conducted in accordance with 40 CFR 122, 40 CFR 123, and 40 CFR 434 and as required by the effective National Pollutant Discharge Elimination System (NPDES) permit.
(4) The monitoring reports shall be submitted to the director every three (3) months.
(5) Any additional monitoring information required by the director if it is necessary to evaluate potential adverse surface water impacts that are not addressed by the other monitoring information requirements of this subsection.
(Natural Resources Commission; 312 IAC 25-4-32; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3449, eff Dec 1, 2001)

312 IAC 25-4-33 Surface mining permit applications; environmental resources information; alternative water supply
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 33. The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent areas for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses. *(Natural Resources Commission; 312 IAC 25-4-33; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001)*

312 IAC 25-4-34 Surface mining permit applications; environmental resources information; climatological factors
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 34. When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including:
(1) the average seasonal precipitation;
(2) the average direction and velocity of prevailing winds; and
(3) the seasonal temperature ranges;
shall be included in the application. *(Natural Resources Commission; 312 IAC 25-4-34; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001)*

312 IAC 25-4-35 Surface mining permit applications; environmental resources information; soil resources
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 35. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 312 IAC 25-6-11. *(Natural Resources Commission; 312 IAC 25-4-35; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001)*

312 IAC 25-4-36 Surface mining permit applications; environmental resources information; land use information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 36. (a) The application shall contain:

(1) A map or aerial photograph showing, and a supporting narrative of, the uses of the land, including vegetative types, existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the anticipated date of beginning the proposed operations, the historic use of the land shall be described.

(2) A narrative of land capability and productivity in conjunction with other environmental resources information required under sections 26 through 35 of this rule, this section, and sections 37 through 39 of this rule. The narrative shall provide an analysis or explanation of the following:

(A) The relative capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative types, and plant communities of the proposed permit area.

(B) The productivity of the proposed permit area before mining expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities, or appropriate state natural resources or agricultural agencies.

(C) Whether the proposed permit has been previously mined, and, if so, the following information, if available:

(i) The type of mining method used.

(ii) The coal seams or other mineral strata mined.

(iii) The extent of coal or other mineral removed.

(iv) The approximate dates of past mining.

(v) The uses of the land preceding mining.

(b) The map or photograph shall indicate the proposed permit area that has been previously mined.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit area and adjacent areas. *(Natural Resources Commission; 312 IAC 25-4-36; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001)*

312 IAC 25-4-37 Surface mining permit applications; environmental resources information; maps

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 37. The permit application shall include maps showing the following information:

(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.

(2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities.

(3) The boundaries of all areas proposed to be affected over the estimated life of the permit, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought.

(4) The location of all buildings on and within one thousand (1,000) feet of the proposed permit area, with identification of the current use of the buildings.

(5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, the following:

(A) Major electric transmission lines.

(B) Pipelines.

(C) Agricultural drainage tile fields.

(6) The location and boundaries of any proposed reference areas for determining the success of revegetation.

(7) The locations of the following:

(A) Water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the director.

(B) Those surface waters that will receive discharges from affected area in the proposed permit area.

(8) Each public road located in or within one hundred (100) feet of the proposed permit area.
(9) The boundaries and location of the following:
(A) Any public park.
(B) Any cultural, archaeological, or historic resources listed, or eligible for listing, in the National Register of Historic Places or the Indiana state register of historic sites and structures.
(C) All archaeological and historic sites known by the division of historic preservation and archaeology within the permit and adjacent areas.
(10) Each cemetery located in or within one hundred (100) feet of the proposed permit area.
(11) Any land within the proposed permit area and adjacent area that is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act.
(Natural Resources Commission; 312 IAC 25-4-37; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3451, eff Dec 1, 2001)

312 IAC 25-4-38 Surface mining permit applications; environmental resources information; cross sections, maps, and plans

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 38. The application shall include cross sections, maps, and plans showing the following:
(1) Elevations and locations of test borings and core samplings.
(2) Elevations and locations of ground water monitoring stations and locations of surface water monitoring stations used to gather data for water quality and quantity if required in preparation of the application.
(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.
(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area.
(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas.
(6) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas.
(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit area and adjacent areas.
(8) Location and extent of existing or previously surface mined areas within the proposed permit area.
(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, air pollution control facilities, and water treatment facilities within the proposed permit area.
(10) Location and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas.
(11) Sufficient slope measurements or cross sectional profiles with slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:
(A) Each measurement shall consist of an angle of inclination, expressed as a percent, along the prevailing slope.
(B) Where the area has been previously mined, the measurements shall extend at least one hundred (100) feet beyond the limits of mining disturbances.
(C) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.
(12) Elevations and locations of monitoring stations used to gather data on fish and wildlife and air quality, if required, in preparation of the application.
(13) Maps, plans, and cross sections included in a permit application, that are required by this section shall be prepared by or under the direction of and certified by a registered professional engineer or professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture.
(Natural Resources Commission; 312 IAC 25-4-38; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3452, eff Dec 1, 2001)

312 IAC 25-4-39 Surface mining permit applications; environmental resources information; prime farmland investigation

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 39. (a) The applicant shall contact the United States Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made. When a soil survey of lands within the proposed permit area contains soil map units that have been designated as prime farmlands:

(1) the applicant shall submit an application in accordance with section 102 of this rule for such designated land; and

(2) after review by the United States Soil Conservation Service, the applicant may submit a request for negative determination for such designated land with the permit application establishing compliance with subsection (b).

(b) In addition, land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(1) That the land has not been historically used as cropland. As used in this section, "historically used for cropland" means the following:

(A) 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 land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations.

(B) Lands that the director 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 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(C) 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 some fact of ownership or control of the land unrelated to the productivity of the land.

(2) The slope of the land is ten percent (10%) or greater.

(3) Other factors exist, such as very rocky surface, or the land is flooded during a growing season more than once in two (2) years.

(c) The soil survey shall be submitted with the permit application. *(Natural Resources Commission; 312 IAC 25-4-39; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3452, eff Dec 1, 2001)*

312 IAC 25-4-40 Surface mining permit applications; reclamation and operations plan; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 40. (a) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area and the proposed life of the mine area where such information is necessary to demonstrate that reclamation required by IC 14-34 can be accomplished by the applicant. The description shall include, at a minimum, the following:

(1) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations.

(2) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in 312 IAC 25-6-64):

(A) Dams, embankments, and other impoundments.

(B) Overburden and topsoil handling and storage areas and structures.

(C) Coal removal, handling, storage, cleaning, and transportation areas and structures.

(D) Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures.

(E) Mine facilities.

(F) Water and air pollution control facilities.

(b) In addition to the requirements listed in subsection (a), each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include the following:

(1) A map.

(2) Appropriate cross sections.
(3) Design drawings.
(4) Specifications sufficient to demonstrate compliance with 312 IAC 25-6-68.
(Natural Resources Commission; 312 IAC 25-4-40; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3453, eff Dec 1, 2001)

312 IAC 25-4-41 Surface mining permit applications; reclamation and operations plan; existing structures
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 41. (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include the following:
(1) Location.
(2) Plans or photographs of the structure that describe or depict its current condition.
(b) Structures in existence prior to the implementation of this permanent program under IC 14-34-1 shall meet the performance standards of IC 14-34-10, IC 14-34-11, and 312 IAC 25-6-5 through 312 IAC 25-6-132; however, when the operator demonstrates in the application for a permit that immediate compliance is not practicable because of conditions not within the control of the operator, such as:
(1) a strike;
(2) an act of God;
(3) equipment availability;
(4) weather; or
(5) force majeure;
the director may approve a schedule for modification of existing structures that achieves compliance with 312 IAC 25-6-5 through 312 IAC 25-6-132 within a reasonable period of time. *(Natural Resources Commission; 312 IAC 25-4-41; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3453, eff Dec 1, 2001)*

312 IAC 25-4-42 Surface mining permit applications; blasting plans; monitoring system
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 42. (a) Each application shall contain a blasting plan for the proposed permit area. The blasting plan shall include the following:
(1) The maximum ground vibration and airblast limits the permittee will not exceed during blasting operations.
(2) The bases for the establishment of the proposed ground vibration and airblast limits.
(3) The methods to be applied to control the adverse effects of blasting operations.
(4) Description of the blasting warning and site access control equipment and procedures to be used.
(5) Description of the procedures for recording and retention of the information required by 312 IAC 25-6-33.
(b) Each application shall contain a description of any system to be used to monitor compliance with the standards of 312 IAC 25-6-32. The description shall include the types, capabilities, sensitivities, and proposed locations of all blast monitoring equipment proposed to be used.
(c) Blasting operations proposed to be conducted within five hundred (500) feet measured horizontally of an active underground mine must be jointly approved by the director, the Indiana bureau of mines and mining, and the Mine Safety and Health Administration. *(Natural Resources Commission; 312 IAC 25-4-42; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3453, eff Dec 1, 2001)*

312 IAC 25-4-43 Surface mining permit applications; reclamation and operations plan; maps
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 43. Each application shall contain maps and plans of the proposed permit and adjacent areas as follows:
(1) The maps and plans shall depict the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations if the facility or feature was shown under sections 37 and 38 of this rule.

(2) The following shall be shown for the proposed permit area and adjacent area within one thousand (1,000) feet:
(A) Buildings, utility corridors, and facilities to be used.
(B) The area of land to be affected within the proposed permit area according to the sequence of mining and reclamation.
(C) Each area of land for which a performance bond will be posted under 312 IAC 25-5.
(D) Each coal storage, cleaning, and loading area.
(E) Each topsoil, spoil, coal waste, and noncoal waste storage area.
(F) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used.
(G) Each source of waste and each disposal facility relating to coal processing or pollution control.
(H) Each facility to be used to protect and enhance fish and wildlife and related environmental values.
(I) Each explosive storage and handling facility.
(J) Location of each:
(i) siltation structure;
(ii) permanent water impoundment;
(iii) coal processing waste bank; and
(iv) coal processing waste dam and embankment;
in accordance with section 49 of this rule, and fill area for the disposal of excess spoil in accordance with section 54 of this rule.
(K) Each air pollution collection and control facility if required.
(3) Maps, plans, and cross sections required under subdivision (2)(D) through (2)(F) and (2)(J) shall be prepared by, or under the direction of, and certified by a registered professional engineer or professional geologist, with necessary assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross sections for:
(A) siltation structures may only be prepared by a registered professional engineer; and
(B) spoil disposal facilities may only be prepared by a registered professional engineer.
(4) All monitoring locations used to demonstrate compliance with 312 IAC 25-6-12.5.
(Natural Resources Commission; 312 IAC 25-4-43; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004)

312 IAC 25-4-44 Surface mining permit applications; reclamation and operations plan; air pollution control
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 44. The permit application under sections 40 through 43 of this rule, this section, and sections 45 through 56 of this rule shall contain one (1) of the following for the proposed mining operation:
(1) A copy of an active Indiana air pollution control board operation permit.
(2) A copy of a completed application for an Indiana air pollution control board operation permit.
(3) A written statement from the air pollution control board indicating that such a permit is not necessary.
(Natural Resources Commission; 312 IAC 25-4-44; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001; errata, 27 IR 1890)

312 IAC 25-4-45 Surface mining permit applications; reclamation and operations plan; reclamation plan; general requirements
Authority: IC 14-34-2-1
Affected: IC 14-34-10

Sec. 45. (a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with IC 14-34-10, 312 IAC 25-6, and the environmental protection standards of IC 14-34 and this article. The plan shall include, at a minimum, all information required under sections 40 and 44 of this rule, this section, and sections 46 through 56 of this rule.
(b) Each plan shall contain the following information for the proposed permit area:
(1) A detailed timetable for the completion of each major step in the reclamation plan.
(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 312 IAC 25-5, with supporting calculations for the estimates.

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps, topographical maps, or cross sections that show the anticipated final surface configuration of the proposed permit area in accordance with 312 IAC 25-6-48 through 312 IAC 25-6-53 and 312 IAC 25-6-144.

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 312 IAC 25-6-11. A demonstration of the suitability of topsoil substitutes or supplements under 312 IAC 25-6-11(c) shall be based upon analysis of the:

(A) thickness of soil horizons;
(B) total depth;
(C) pH;
(D) buffer pH;
(E) phosphorous;
(F) potassium;
(G) percent coarse fragments and texture; and
(H) areal extent;

of the different kinds of soils. The requirement to determine percent coarse fragments may be waived by an authorized representative of the director if he or she determines that the alternate material is a type of silt-blown, alluvial soil for which the analyses of percent coarse fragments would be unnecessary. The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if necessary to demonstrate suitability.

(5) A plan for revegetation as required in 312 IAC 25-6-54 through 312 IAC 25-6-61, including descriptions of the following:

(A) Schedule of revegetation.
(B) Species and amounts per acre of seeds and seedlings to be used.
(C) Methods to be used in planting and seeding.
(D) Mulching techniques.
(E) Irrigation, if appropriate, and pest and disease control measures, if any.
(F) Measures proposed to be used to determine the success of revegetation as required in 312 IAC 25-6-59 through 312 IAC 25-6-61.
(G) Methods for evaluating the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 312 IAC 25-6-7.

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 312 IAC 25-6-12, 312 IAC 25-6-19, 312 IAC 25-6-36, 312 IAC 25-6-42, and 312 IAC 25-6-50 and a description of the contingency plans that have been developed to preclude sustained combustion of such materials.

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with 312 IAC 25-6-8 through 312 IAC 25-6-10.

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

(Natural Resources Commission; 312 IAC 25-4-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001, except subsection (b)(4); errata, 27 IR 1890; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2446, eff Jan 1, 2005)

312 IAC 25-4-46 Surface mining permit applications; reclamation plan; fish and wildlife protection and enhancement

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 46. Each plan shall describe how the permittee will minimize, to the extent possible using best technology currently available, disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations and how these values will be enhanced where practicable. If the plan does not include enhancement measures, the plan shall explain why such measures are not practicable. The plan shall comply with the following requirements:

(1) The plan shall be consistent with 312 IAC 25-6-46.

(2) The plan shall apply, at a minimum, to species and habitats identified under section 29 of this rule.
(3) The plan shall include a description of the following:
(A) Any measures necessary to comply with the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).
(B) Protective measures that will be used during active mining, which may include buffer zones, selective location and special design of roads and power lines, and surface water monitoring.
(C) Enhancement measures that will be used during and after reclamation to develop or improve aquatic and terrestrial habitats, such as the following:
(i) Replacement of streams and wetlands.
(ii) Retention of ponds, impoundments, and depressions that seasonally impound water.
(iii) Establishment of wildlife food and cover vegetation.
(iv) Replacement of perches and nest boxes.
(v) Construction or development of terrain features that provide shelter, cover, protection, or nesting places for wildlife species.

(Natural Resources Commission; 312 IAC 25-4-46; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3455, eff Dec 1, 2001)

312 IAC 25-4-47 Surface mining permit applications; reclamation and operations plan; reclamation plan; protection of hydrologic balance

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 47. (a) Each reclamation plan shall contain a detailed description, including maps and drawings of the measures to be taken during the mining and reclamation process, through bond release, to assure the protection of the following:
(1) The quality of surface and ground water systems, within the permit area and adjacent area, from adverse effects of the mining and reclamation process.
(2) The rights of present users of that water.
(3) The quantity of surface and ground water systems, within the permit area and adjacent area, from adverse effects of the mining and reclamation process or to provide alternative sources of water under section 33 of this rule and 312 IAC 25-6-25 where the protection of quantity cannot be assured.
(4) The prevention of material damage outside the permit area.
(5) Compliance with applicable federal and state water quality laws and regulations.
(6) The hydrologic balance within the permit and adjacent areas.
(b) The description in subsection (a) shall include the following:
(1) A plan for the control of drainage under 312 IAC 25-6-5 through 312 IAC 25-6-69 of surface and ground water drainage into, through, and out of the proposed permit area.
(2) A plan for the treatment, where required under 312 IAC 25-6-5 through 312 IAC 25-6-69, of surface and ground water drainage from the area to be affected by the proposed activities and proposed quantitative limits on pollutants in discharges subject to 312 IAC 25-6-13, according to the more stringent of:
(A) 312 IAC 25-6-5 through 312 IAC 25-6-69; or
(B) other applicable state or federal laws.
(3) A plan for the restoration of the approximate recharge capacity of the permit area under 312 IAC 25-6-22 and as required by section 45 of this rule.
(4) A plan for the collection, recording, and reporting of ground and surface water quality and water quantity data under 312 IAC 25-6-23.
(5) A plan to avoid acid or toxic drainage.
(6) A plan to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow.
(7) A plan to provide water treatment facilities when needed.
(8) A plan to control drainage.
(9) A plan to demonstrate compliance with 312 IAC 25-6-12.5.
(c) The description in subsection (a) shall include a determination of the probable hydrologic consequences (PHC) of the

mining and reclamation operations proposed, in the permit and adjacent areas, with respect to the quantity and quality of 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 director. Information shall be provided as follows:

(1) 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.

(2) The PHC determination shall include findings on the following:

(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 that is used for domestic, agricultural, industrial, or other legitimate purpose.

(D) What impact the proposed operation will have on the following:

(i) Sediment yields 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.

(v) Other characteristics as required by the director.

(3) Sampling and analysis shall be conducted under section 28(d) of this rule.

(4) An application for a permit revision shall be reviewed by the director to determine whether a new or updated PHC determination shall be required.

(d) The description in subsection (a) shall include a plan specifically addressing any potentially adverse hydrologic consequences identified in the PHC determination prepared under subsection (c) and shall include preventative and remedial measures. *(Natural Resources Commission; 312 IAC 25-4-47; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3456, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3861, eff Feb 1, 2004)*

312 IAC 25-4-48 Surface mining permit applications; reclamation and operations plan; postmining land uses

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 48. (a) Each plan shall contain a detailed description of the proposed use, following reclamation of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain each of the following:

(1) How the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use.

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 312 IAC 25-6-64.

(3) The consideration given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. *(Natural Resources Commission; 312 IAC 25-4-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3457, eff Dec 1, 2001)*

312 IAC 25-4-49 Surface mining permit applications; reclamation and operations plan; reclamation plan for siltation structures, impoundments, dams, and embankments, and refuse piles

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 49. (a) Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste dam, embankment, or refuse pile within the proposed permit area. The information required

shall be provided as follows:

(1) Each general plan shall do the following:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

(B) Contain a description, map, and cross section of the structure and its location.

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall do the following:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, with assistance from experts in related fields, such as geology, land surveying, and landscape architecture.

(B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe the operation and maintenance requirements for each structure.

(D) Describe the timetable and plans to remove each structure, if appropriate.

(E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a), and include a copy of the plans for design and construction that has been approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-17. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-20.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-20 and the requirements of the Mine Safety and Health Administration at 30 CFR 77.216-1 and 30 CFR 77.216-2.

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-36 through 312 IAC 25-6-39.

(e) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-34, 312 IAC 25-6-36, and 312 IAC 25-6-43 through 312 IAC 25-6-45. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

(1) The number, location, and depth of boring and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

(A) Strength parameters.

(B) Pore pressures.

(C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(g) If the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:

(1) structure is twenty (20) feet or higher;

(2) drainage area above the structure is one (1) square mile or larger; or

(3) volume of water impounded is more than one hundred (100) acre-feet;
an application shall be submitted to the division of water, in the department of natural resources, and approval shall be obtained from the director before construction of the structure begins. *(Natural Resources Commission; 312 IAC 25-4-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3457, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2447, eff Jan 1, 2005)*

312 IAC 25-4-50 Surface mining permit applications; reclamation and operations plan; surface mining near underground mining

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 50. For surface mining activities within the proposed permit area to be conducted within five hundred (500) feet measured horizontally of an underground mine, the application shall describe the measures to be used to comply with 312 IAC 25-6-35. *(Natural Resources Commission; 312 IAC 25-4-50; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3458, eff Dec 1, 2001)*

312 IAC 25-4-51 Surface mining permit applications; reclamation and operations plan; diversions

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 51. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 312 IAC 25-6-14 and 312 IAC 25-6-15. *(Natural Resources Commission; 312 IAC 25-4-51; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3458, eff Dec 1, 2001)*

312 IAC 25-4-52 Surface mining permit applications; reclamation and operation plan; protection of public parks and historic lands

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 52. (a) For any public parks or any historic lands listed on the National Register of Historic Places or the Indiana state register of historic sites and structures that may be adversely affected by the proposed operations, each plan shall describe the measures to be used:

(1) to prevent adverse impacts; or

(2) if valid existing rights exist or joint agency approval is to be obtained under 312 IAC 25-3-1(3), to minimize adverse impacts.

(b) The director may impose conditions that require the applicant to protect historic or archaeological properties listed on, or eligible for listing on, the National Register of Historic Places or the Indiana state register of historic sites and structures through appropriate mitigation and treatment measures consistent with the standards established under 312 IAC 21-3. Mitigation and treatment measures must be approved by the director after consideration of the comments of the division of historic preservation and archaeology. Required measures that avoid impacts must remain in place throughout all mining and reclamation operations. Required measures that involve the mitigation of impacts through excavation or documentation may be taken after permit issuance provided that they are completed before the property is affected by any mining operation. *(Natural Resources Commission; 312 IAC 25-4-52; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3458, eff Dec 1, 2001)*

312 IAC 25-4-53 Surface mining permit applications; reclamation and operations plan; relocation or use of public roads

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 53. Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interest of the public and landowners affected are protected if, under 312 IAC 25-3-1, the applicant seeks to have the director approve:

(1) conducting the proposed surface mining activities within one hundred (100) feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) relocating a public road.
(Natural Resources Commission; 312 IAC 25-4-53; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3459, eff Dec 1, 2001)

312 IAC 25-4-54 Surface mining permit applications; reclamation and operations plan; disposal of excess spoil
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 54. (a) Each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to 312 IAC 25-6-34.
(b) For excess spoil disposal areas other than box cut spoil, the plans shall include the following:
(1) A description of the geotechnical investigation design, construction, operations, maintenance, and removal, if appropriate, of the site and structures.
(2) The results of a geotechnical investigation of the proposed disposal site, including the following:
(A) The character of bedrock and any adverse geologic conditions in the disposal area.
(B) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site.
(C) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations.
(D) A technical description of the rock materials to be utilized in the construction of those disposal structures:
(i) containing rock chimney cores; or
(ii) underlain by a rock drainage blanket.
(E) A stability analysis, including, but not limited to:
(i) strength parameters;
(ii) pore pressures; and
(iii) long term seepage conditions.
These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered.
(3) If, under 312 IAC 25-6-34, rock-toe buttresses or key-way cuts are required, the application shall include the following:
(A) The number, location, and depth of borings or test pits that shall be determined with respect to the size of the spoil disposal structure and subsurface conditions.
(B) Engineering specifications utilized to design the rock-toe buttress or key-way cut that shall be determined in accordance with subdivision (2)(E).
(c) Where box cut spoil is proposed to be considered as excess spoil, the application shall contain the following:
(1) Appropriate maps, plans, and cross sections that demonstrate that over the life of the mining operation the box cut spoil is not needed to restore the approximate original contour.
(2) Plans for the design, construction, and reclamation of the box cut spoil area that meet the requirements of 312 IAC 25-6-34.
(Natural Resources Commission; 312 IAC 25-4-54; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3459, eff Dec 1, 2001)

312 IAC 25-4-55 Surface mining permit applications; reclamation and operations plan; transportation facilities
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 55. Each application shall contain a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:
(1) Specifications for each culvert, bridge, drainage ditch, and drainage structure.
(2) A description of measures to be taken to comply with 312 IAC 25-6-65.
(3) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.
(Natural Resources Commission; 312 IAC 25-4-55; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3459, eff Dec 1, 2001)

312 IAC 25-4-56 Surface mining permit applications; reclamation and operations plan; road systems

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 56. (a) Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in 312 IAC 25-1-126, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include the following:

(1) A map, appropriate cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low water crossings, and drainage structures.

(2) The drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the director in accordance with 312 IAC 25-6-65(d)(1).

(3) The drawings and specifications for each proposed ford of an intermittent or perennial stream that is used as a temporary route, as necessary for approval of the ford by the director in accordance with 312 IAC 25-6-66(3)(B).

(4) A description of measures to be taken to obtain approval of the director for alteration or relocation of a natural stream channel under 312 IAC 25-6-66(4)(E).

(5) The drawings and specifications for each low water crossing of perennial or intermittent stream channels so that the director can maximize the protection of the stream in accordance with 312 IAC 25-6-66(4)(F).

(6) A description of the plans to remove and reclaim each road that would not be retained under an approved postmining land use and the schedule for this removal and reclamation.

(b) The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads, as meeting:

(1) the requirements of this article;

(2) current, prudent engineering practices; and

(3) any design criteria established by the director.

(c) Each primary road shall be in compliance with the minimum static safety factor of one and three-tenths (1.3) for all embankments specified in 312 IAC 25-6-66 or shall comply with the design requirements of 312 IAC 25-6-66. *(Natural Resources Commission; 312 IAC 25-4-56; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3460, eff Dec 1, 2001)*

312 IAC 25-4-57 Underground mining permit applications; legal and financial information; applicability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 57. This section and sections 58 through 66 of this rule apply to any person who applies for a permit to conduct underground mining activities. *(Natural Resources Commission; 312 IAC 25-4-57; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3460, eff Dec 1, 2001)*

312 IAC 25-4-58 Underground mining permit applications; identification of interests

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 778.13

Sec. 58. (a) An application shall contain the following information, except the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(2) The name, address, telephone number, and, as applicable, the Social Security number and employer identification number of the following:

(A) The applicant.

(B) The applicant's resident agent.

(C) The person who will pay the abandoned mine land reclamation fee.

(3) The following for each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94 as applicable:

(A) The person's name, address, Social Security number, and employer identification number.
(B) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organization structure.
(C) The title of the person's position, the date the position was assumed, and, when submitted under 312 IAC 25-7-5, the date of departure from the position.
(D) Each additional name and identifying number, including the following:
(i) The employer identification number.
(ii) The federal or state permit number.
(iii) The MSHA number with the 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.
(E) 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.
(4) The following 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" in 312 IAC 25-1-94:
(A) Name, address, and identifying numbers, including the following:
(i) The employer identification number.
(ii) The federal or state permit number and MSHA number.
(iii) The date of issuance of the MSHA number.
(iv) The regulatory authority.
(B) Ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
(5) The name and address of:
(A) each legal or equitable owner of record of the surface and mineral property to be mined;
(B) each holder of record of any leasehold interest in the property to be mined; and
(C) any purchaser of record under a real estate contract for the property to be mined.
(6) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.
(7) The MSHA numbers for all mine-associated structures that require MSHA approval.
(8) 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 that is not on public file under Indiana law shall be held in confidence by the director as provided under section 15(b) of this rule.
(b) After an applicant is notified that the 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 subsection (a)(1) through (a)(4).
(c) The applicant shall submit the information required by this section and section 59 of this rule in any prescribed format that is issued by the commission, which shall conform to the format requirements of the Office of Surface Mining Reclamation and Enforcement. *(Natural Resources Commission; 312 IAC 25-4-58; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3460, eff Dec 1, 2001)*

312 IAC 25-4-59 Underground mining permit applications; compliance information
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 778.14

Sec. 59. (a) Each application shall contain the following information:
(1) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:
(A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or
(B) forfeited a performance bond or similar security deposited in lieu of a bond.
(2) A brief explanation of the facts involved, if any such suspension, revocation, or forfeiture referred to in subdivision (1)

has occurred, including the following:

(A) The identification number and date of issuance of the permit, and the date and amount of bond or similar security.

(B) Identification of the authority that suspended or revoked the permit or forfeited the bond, and the stated reasons for the action.

(C) The current status of the permit, bond, or similar security involved.

(D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

(E) The current status of the proceedings identified in clause (D).

(3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns and controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:

(A) 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.

(B) A brief description of the violation alleged in the notice.

(C) 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 this subdivision to obtain administrative or judicial review of the violation.

(D) The current status of the proceedings and of the violation notice.

(E) The actions, if any, taken by any person identified in this subdivision to abate the violation.

(b) After the 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. *(Natural Resources Commission; 312 IAC 25-4-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3461, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-4-60 Underground mining permit applications; legal and financial information; right of entry and operation information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 60. (a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall:

(1) identify the specific lands to which the document pertains; and

(2) explain the legal rights claimed by the applicant.

(b) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide the following for lands to be affected by those operations 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 document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, documentation that, under the applicable Indiana law, the applicant has the legal authority to extract the coal by those methods.

In lieu of copies of the consent, document, or other documentation required in this subsection, the applicant may provide an affidavit, signed by a responsible officer of the applicant, stating, under oath, that the information required does in fact exist and is available for inspection by any person at a given location set forth in that affidavit.

(c) Nothing in this section shall be construed to afford the department the authority to adjudicate property title disputes. *(Natural Resources Commission; 312 IAC 25-4-60; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3462, eff Dec 1, 2001)*

312 IAC 25-4-61 Underground mining permit applications; legal and financial information; areas designated unsuitable for mining

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 61. (a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities or under study for designation in an administrative proceeding initiated under 312 IAC 25-3-6 through 312 IAC 25-3-12.

(b) If an applicant claims the exemption in section 115 of this rule, the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 1, 1977, concerning the proposed underground mining activities.

(c) Subject to valid existing rights, if an applicant proposes to conduct or locate surface operations or facilities within three hundred (300) feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 312 IAC 25-3-1(5). *(Natural Resources Commission; 312 IAC 25-4-61; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3462, eff Dec 1, 2001)*

312 IAC 25-4-62 Underground mining permit applications; legal and financial information; permit terms

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 62. (a) Each permit shall be issued for a fixed term, not to exceed five (5) years, except where the director grants a longer fixed period as provided in this section.

(b) Each application shall state:

(1) the anticipated or actual starting and termination date of each phase of the underground mining activities;

(2) the anticipated number of acres of surface lands to be affected; and

(3) the horizontal and vertical extent of proposed underground mine workings;

for each phase of mining and over the total life of the permit.

(c) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information required by section 119 of this rule. *(Natural Resources Commission; 312 IAC 25-4-62; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3462, eff Dec 1, 2001)*

312 IAC 25-4-63 Underground mining permit applications; legal and financial information; personal injury and property damage information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 63. Each application shall contain a certificate of liability insurance consistent with 312 IAC 25-5. *(Natural Resources Commission; 312 IAC 25-4-63; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001)*

312 IAC 25-4-64 Underground mining permit applications; legal and financial information; identification of other licenses and permits

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 64. Each application shall contain a list of other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by the following:

(1) The type of permit or license.

(2) The name and address of issuing authority.

(3) The identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the

permits or licenses.

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

(Natural Resources Commission; 312 IAC 25-4-64; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001)

312 IAC 25-4-65 Underground mining permit applications; identification of library where application on file

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 65. Each application shall identify by name and address the county library where the applicant will simultaneously file a copy of the application for public inspection under section 109(d) of this rule. *(Natural Resources Commission; 312 IAC 25-4-65; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001)*

312 IAC 25-4-66 Underground mining permit applications; legal and financial information; newspaper advertisement and proof of publication

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 66. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application not later than four (4) weeks after the last date of publication required under section 109(a) of this rule. *(Natural Resources Commission; 312 IAC 25-4-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001)*

312 IAC 25-4-67 Underground mining permit applications; environmental resources information; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 67. Each permit application shall include a description of the existing premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed underground mining activities. *(Natural Resources Commission; 312 IAC 25-4-67; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001)*

312 IAC 25-4-68 Underground mining permit applications; environmental resources information; cultural, historic, and archaeological resources

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 68. (a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources in or within one thousand (1,000) feet of the proposed permit area. The description shall be based on information obtained from the division of historic preservation and archaeology.

(b) The director shall require the applicant to submit additional information to describe and identify the nature of cultural, historic, and archaeological resources if the director determines that sufficient information is not available from the division of historic preservation and archaeology to identify the nature of these resources. The sources of the information shall include each of the following:

(1) State and local cultural, historic, and archaeological preservation agencies.

(2) Research organizations.

(3) Institutions that maintain records of cultural, historic, and archaeological resources.

(c) If, based upon the written comments of the division of historic preservation and archaeology and other sources, the director determines there is a substantial likelihood that there are undiscovered sites containing cultural, historic, or archaeological resources that would be eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures that would be adversely affected by surface coal mining operations, the director may require the applicant to identify and evaluate the nature of these resources through any of the following:

(1) The collection of additional information.

(2) The conduct of field investigations.
(3) Other appropriate analyses.
(d) The director may require an applicant to evaluate the significance of an important site that contains cultural, historic, or archaeological resources identified in this section through any of the following:
(1) The evaluation of records of research institutions and the division of historic preservation and archaeology.
(2) The evaluation of written reports.
(3) Field investigations.
(4) Other appropriate investigations.
(e) The identification and evaluation of cultural, historic, and archaeological resources under subsection (b), (c), or (d) shall be conducted according to 312 IAC 21-3. *(Natural Resources Commission; 312 IAC 25-4-68; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3464, eff Dec 1, 2001)*

312 IAC 25-4-69 Underground mining permit applications; environmental resources information; hydrology
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 69. (a) Each application shall contain a description of the hydrology, including water quantity and water quality for the permit area, the adjacent area, and the general area.
(b) Information on hydrology and water quality and water quantity outside the proposed permit area and within the general area shall be provided by the director from such areas with similar hydrologic conditions.
(c) The applicant shall submit additional information for the permit area as part of the permit application as required by the director and according to this section and sections 70 through 74 of this rule.
(d) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. *(Natural Resources Commission; 312 IAC 25-4-69; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3464, eff Dec 1, 2001)*

312 IAC 25-4-70 Underground mining permit applications; environmental resources information; fish and wildlife
Authority: IC 14-34-2-1
Affected: IC 14-22-34; IC 14-34

Sec. 70. (a) Each application shall include information on fish and wildlife species and their habitats present or likely to be present in the permit area and adjacent area, based on published literature, information available from state and federal fish and wildlife agencies, and any site-specific studies required under subsection (b).
(b) Site-specific information shall be required by the director as to respective species or habitats when the permit area or adjacent area is likely to include any of the following:
(1) Species of plants or animals listed or proposed to be listed as endangered or threatened or critical habitats designated by the Secretary of the Interior under the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).
(2) Species listed by the director as endangered under IC 14-22-34.
(3) Habitats of unusually high value for fish and wildlife such as important streams, wetlands and riparian areas, migration routes, reproduction areas, and areas offering special shelter or protection.
(Natural Resources Commission; 312 IAC 25-4-70; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3464, eff Dec 1, 2001)

312 IAC 25-4-71 Underground mining permit applications; environmental resources information; geology description
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 71. (a) Each application shall contain geologic information in sufficient detail to assist in each of the following:
(1) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface water and ground water monitoring is necessary.
(2) Determining all potentially acid-forming or toxic-forming strata down to and including the stratum immediately beneath the coal seam to be mined.

(3) Determining whether reclamation as required by this article can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
(4) Preparing the subsidence control plan under section 91 of this rule.
(b) Geologic information shall include, at a minimum, each of the following:
(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas and other parameters that influence the required reclamation, and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground water. It shall be based on all of the following:
(A) The cross sections, maps, and plans required by section 79 of this rule.
(B) The information obtained under subdivisions (2) and (3) and subsection (c).
(C) Geologic literature and practices.
(2) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings, drill cores, or fresh, unweathered, and uncontaminated samples from rock outcrops, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. The analyses shall result in the following:
(A) Logs showing the lithologic characteristics, including physical properties and thickness of each stratum and location of ground water where occurring.
(B) Chemical analyses identifying those strata that may contain acid-forming, toxic-forming, or alkalinity-producing materials and to determine their content, except that the director may find that the analysis for alkalinity-producing material is unnecessary.
(C) Chemical analysis of the coal seam for acid-forming or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the director may find that the analysis of pyritic sulfur content is unnecessary.
(3) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data:
(A) Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted and location of ground water where occurring.
(B) Chemical analyses for acid-forming, toxic-forming, or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined.
(C) Chemical analyses of the coal seam for acid-forming or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the director may find that the analysis of pyritic sulfur content is unnecessary.
(D) For standard room-and-pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.
(c) If determined to:
(1) be necessary to protect the hydrologic balance;
(2) minimize or prevent subsidence; or
(3) meet the performance standards of this article;
the director may require the collection, analysis, and description of geologic information in addition to that required by subsection (b).

(d) At the request of the applicant, the director may waive, in writing, in whole or in part, any requirement of subsection (b)(2) and (b)(3) as to a specific permit if that information is unnecessary because other reliable information is available. In any event, information provided by the applicant that pertains to physical or chemical properties of the coal shall remain confidential and not subject to public inspection. *(Natural Resources Commission; 312 IAC 25-4-71; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3465, eff Dec 1, 2001)*

312 IAC 25-4-72 Underground mining permit applications; environmental resources information; ground water
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 72. (a) Each application shall include the following ground water information for the permit area and the adjacent area:
(1) The location and extent of each aquifer that may be affected by the mining and the estimated level of the water table.
(2) The quality of subsurface water encountered.
(3) The location, usage, and ownership for the permit and adjacent areas of existing wells, springs, and other ground water resources.
(4) The estimated recharge capacity of the ground water system in the permitted area using available information for such areas or for areas with similar hydrologic conditions.
(5) The approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.
(6) A description of the seasonal variation in water quantity and water quality in the permit and adjacent areas as follows:
(A) Baseline information on seasonal water levels.
(B) The following water quality parameters:
(i) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
(ii) The pH in standard units.
(iii) Any required state water quality standards and federal United States Environmental Protection Agency effluent limitations.
(iv) Total iron.
(v) Total manganese.
(vi) Acidity and alkalinity.
(vii) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse ground water impacts.

(b) If the determination of the probable hydrologic consequences as required by section 85 of this rule 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 contamination of ground water or surface water supplies, the director shall require the applicant to provide information supplemental to that required under this section as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon any of the following:
(1) Drilling.
(2) Aquifer tests.
(3) Hydrogeologic analysis of the water-bearing strata.
(4) Flood flows.
(5) Analysis of other water quality or quantity characteristics.

(c) The application shall include a ground water monitoring plan based upon the probable hydrologic consequences determination required under section 85(c) of this rule and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide the following information:
(1) The monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in section 85(a) of this rule.
(2) The identification of the quantity and quality parameters to be monitored, sampling frequency, sampling procedures, and site locations.
(3) How the data may be used to determine the impacts of the operation upon the hydrologic balance.
(4) Specific water parameter information shall be monitored and data submitted to the director at least every three (3) months for each monitoring location. The required information shall include, at a minimum, the following:
(A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
(B) The pH in standard units.
(C) Total iron.
(D) Total manganese.
(E) Water levels.
(5) Any additional monitoring information required by the director if it is necessary to evaluate potential adverse ground water impacts that are not addressed by the other monitoring requirements of this subsection.
(6) If an applicant can demonstrate, by the use of the probable hydrologic consequences determination and other available information, that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an

aquifer that significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the director.

(Natural Resources Commission; 312 IAC 25-4-72; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3466, eff Dec 1, 2001)

312 IAC 25-4-73 Underground mining permit applications; environmental resources information; surface water information

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 73. (a) Surface water information shall include the following:

(1) The name and location of the surface stream or tributary that will receive drainage from the permit area.

(2) The location of any discharge into a surface water body.

(3) The location and ownership of all streams, lakes, ponds, springs, and similar surface water bodies within the proposed permit and adjacent areas.

(b) Surface water information shall include a description of the seasonal variation in water quantity and quality of perennial streams in the permit and adjacent areas as well as those streams or other water bodies in the adjacent area which will receive drainage from the permit area in terms of the following:

(1) Baseline information on seasonal flow rates.

(2) The following water quality parameters:

(A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.

(B) Total suspended solids in milligrams per liter.

(C) The pH in standard units.

(D) Total iron.

(E) Total manganese.

(F) Acidity and alkalinity.

(G) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse surface water impacts.

(c) If a determination of the probable hydrologic consequences as required by section 85 of this rule 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 water or surface water supplies, the director shall require an applicant to provide information supplemental to that required under subsection (b) as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(d) The application shall include a surface water monitoring plan based upon the probable hydrologic consequences determination required under section 85(c) of this rule 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 postmined land uses and to the objective for protection of the hydrologic balance as set forth in section 85 of this rule as well as the effluent limitations found at 40 CFR 434. *(Natural Resources Commission; 312 IAC 25-4-73; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3467, eff Dec 1, 2001)*

312 IAC 25-4-74 Underground mining permit applications; environmental resources information; alternative water supply

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 74. The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources. *(Natural Resources Commission; 312 IAC 25-4-74; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3467, eff Dec 1, 2001)*

312 IAC 25-4-75 Underground mining permit applications; environmental resources information; climatological factors
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 75. When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including:
(1) the average seasonal precipitation;
(2) the average direction and velocity of prevailing winds; and
(3) the seasonal temperature ranges;
shall be included in the application. *(Natural Resources Commission; 312 IAC 25-4-75; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3467, eff Dec 1, 2001)*

312 IAC 25-4-76 Underground mining permit applications; environmental resources information; soil resources
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 76. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 312 IAC 25-6-75. *(Natural Resources Commission; 312 IAC 25-4-76; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3468, eff Dec 1, 2001)*

312 IAC 25-4-77 Underground mining permit applications; environmental resources information; land use
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 77. (a) The application shall contain the following:
(1) A map or aerial photograph showing, and a supporting narrative of, the uses of the land, including vegetative types, existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the anticipated date of beginning the proposed operations, the historic use of the land shall be described.
(2) A narrative of land capability and productivity, in conjunction with other environmental resources information required under sections 67 through 76 of this rule, this section, and sections 78 through 80 of this rule. The narrative shall provide analysis or explanation of the following:
(A) The relative capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative types and plant communities, and the hydrology of the proposed permit area.
(B) The productivity of the proposed permit area before mining expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.
(C) Whether the proposed permit area has been previously mined and, if so, the following information:
(i) The type of mining method used.
(ii) The coal seams or other mineral strata mined.
(iii) The extent of coal or other minerals removed.
(iv) The approximate dates of past mining.
(v) The uses of the land preceding mining.
(b) The map or photograph shall indicate the proposed permit area that has been previously mined.
(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit area and adjacent areas. *(Natural Resources Commission; 312 IAC 25-4-77; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3468, eff Dec 1, 2001)*

312 IAC 25-4-78 Underground mining permit applications; environmental resources information; maps

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 78. The permit application shall include maps showing the following:
(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.
(2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities.
(3) The boundaries of all areas proposed to be affected over the estimated life of the permit, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought.
(4) The location of all buildings in and within one thousand (1,000) feet of the proposed permit area, with identification of the current use of the buildings.
(5) The location of surface and subsurface manmade features, within, passing through, or passing over the proposed permit area, including, but not limited to, the following:
(A) Major electric transmission lines.
(B) Pipelines.
(C) Agricultural drainage tile fields.
(6) The location and boundaries of any proposed reference areas for determining the success of revegetation.
(7) The locations of the following:
(A) Water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the director.
(B) Those surface waters that will receive discharges from affected areas in the proposed permit area.
(8) Each public road located in, or within, one hundred (100) feet of the proposed permit area.
(9) The boundaries and locations of the following:
(A) Any public park.
(B) Any cultural, archaeological, or historic resources listed, or eligible for listing, in the National Register of Historic Places or the Indiana state register of historic sites and structures.
(C) All archaeological and historic sites known by the division of historic preservation and archaeology within the permit and adjacent areas.
(10) Each cemetery located in or within one hundred (100) feet of the proposed permit area.
(11) Any land within the proposed permit area and adjacent area that is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act.

(Natural Resources Commission; 312 IAC 25-4-78; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3468, eff Dec 1, 2001)

312 IAC 25-4-79 Underground mining permit applications; environmental resources information; cross sections, maps, and plans

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 79. The application shall include cross sections, maps, and plans showing the following:
(1) Elevations and locations of test borings and core samplings.
(2) Elevations and locations of ground water monitoring stations and locations of surface water monitoring stations used to gather data on water quality and quantity in preparation of the application.
(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.
(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area.
(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas.
(6) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas, and portrayal

of seasonal differences of head in different aquifers on cross sections and contour maps.

(7) Location of surface water bodies, such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches, within the proposed permit area and adjacent areas.

(8) Location and extent of existing or previously surface-mined areas within the proposed permit area.

(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area.

(10) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas.

(11) Sufficient slope measurements or cross sectional profiles with slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

(A) Each measurement shall consist of an angle of inclination, expressed as a percent, along the prevailing slope.

(B) Where the area has been previously mined, the measurements shall extend at least one hundred (100) feet beyond the limits of mining disturbances.

(C) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(12) Elevations and locations of monitoring stations used to gather data on fish and wildlife and air quality, if required, in preparation of the application.

(13) Maps, plans, and cross sections included in a permit application that are required by this section shall be prepared by, or under the direction of and certified by a registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture.

(Natural Resources Commission; 312 IAC 25-4-79; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3469, eff Dec 1, 2001)

312 IAC 25-4-80 Underground mining permit applications; environmental resources information; prime farmland investigation

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 80. (a) The applicant shall contact the United States Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made. When a soil survey of lands within the proposed permit area contains soil map units that have been designated as prime farmlands the applicant:

(1) shall submit an application in accordance with section 102 of this rule for such designated land; and

(2) after review by the United States Soil Conservation Service, may submit a request for negative determination for such designated land with the permit application establishing compliance with subsection (b).

(b) In addition, land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(1) That the land has not been historically used as cropland. As used in this section, "historically used for cropland" means the following:

(A) 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 land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations.

(B) Lands that the director 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 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(C) 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 some fact of ownership or control of the land unrelated to the productivity of the land.

(2) The slope of the land is ten percent (10%) or greater.

(3) Other factors exist, such as very rocky surface, or the land is flooded during a growing season or seasons more than once in two (2) years.

(c) The soil survey shall be submitted with the permit application. *(Natural Resources Commission; 312 IAC 25-4-80; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3470, eff Dec 1, 2001)*

312 IAC 25-4-81 Underground mining permit applications; operation plan; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 784.11; 30 CFR 784.30

Sec. 81. (a) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area and the proposed life of the mine area where such information is necessary to demonstrate that reclamation required by IC 14-34 can be accomplished by the applicant. The description shall include, at a minimum, the following:

(1) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations.

(2) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless the retention of such facilities is necessary for a postmining land use as specified in 312 IAC 25-6-128:

(A) Dams, embankments, and other impoundments.

(B) Overburden and topsoil handling and storage areas and structures.

(C) Coal removal, handling, storage, cleaning, and transportation areas and structures.

(D) Spoil, coal processing waste, mine development waste, and noncoal waste removal handling, storage, transportation, and disposal areas and structures.

(E) Mine facilities.

(F) Water pollution control facilities.

(b) In addition to the requirements listed in subsection (a), each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 312 IAC 25-6-132 for each facility.

(c) If an application proposes to mine within a zone of influence, the application must include a typical detailed mine plan to a scale of no greater than one (1) inch equals one hundred (100) feet. The mine plan shall depict the pillar, entry, crosscut, and panel dimensions within the zone of influence. *(Natural Resources Commission; 312 IAC 25-4-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3470, eff Dec 1, 2001)*

312 IAC 25-4-82 Underground mining permit applications; operation plan; existing structures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 82. (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include the following:

(1) Location.

(2) Plans of the structures that describe its current condition.

(b) Structures in existence prior to the implementation of this permanent program under IC 14-34 shall meet the performance standards of 312 IAC 25-6-5 through 312 IAC 25-6-133; however, when the operator demonstrates in the application for a permit that immediate compliance is not practicable, the director may approve a schedule for modification of existing structures that achieves compliance with 312 IAC 25-6-5 through 312 IAC 25-6-133 within a reasonable period of time. *(Natural Resources Commission; 312 IAC 25-4-82; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3471, eff Dec 1, 2001)*

312 IAC 25-4-83 Underground mining permit applications; reclamation plan; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34-10; IC 14-34-11

Sec. 83. (a) Each application shall contain a plan for the reclamation of the lands within the proposed permit area, showing how the applicant will comply with IC 14-34-10, IC 14-34-11, and the environmental protection performance standards of IC 14-34 and this article. The plan shall include, at a minimum, all information required under sections 83 through 97 of this rule.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan.

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond

under 312 IAC 25-5, with supporting calculations for the estimates.

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps, topographical maps, or cross sections that show the anticipated final surface configuration of the proposed permit area in accordance with 312 IAC 25-6-112 through 312 IAC 25-6-114 and 312 IAC 25-6-144.

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 312 IAC 25-6-75. A demonstration of the suitability of topsoil substitutes or supplements under 312 IAC 25-6-75(c) shall be based upon analysis of the thickness of soil horizons, total depth, pH, buffer pH, phosphorous, potassium, percent coarse fragments, texture, and areal extent of the different kinds of soils. The requirement to determine percent coarse fragments may be waived by an authorized representative of the director, if he or she determines that the alternate material is a type of silt-blown, alluvial soil for which the analyses of percent coarse fragments would be unnecessary. The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitute or supplements.

(5) A plan for revegetation as required in 312 IAC 25-6-115 through 312 IAC 25-6-122, including, but not limited to, descriptions of the:

(A) schedule of revegetation;

(B) species and amounts per acre of seeds and seedlings to be used;

(C) methods to be used in planting and seeding;

(D) mulching techniques;

(E) irrigation, if appropriate, and pest and disease control measures, if any;

(F) measures proposed to be used to determine the success of revegetation as required in 312 IAC 25-6-120 through 312 IAC 25-6-122; and

(G) a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resources as required in 312 IAC 25-6-92.

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 312 IAC 25-6-105 and 312 IAC 25-6-112 and a description of the contingency plans that have been developed to preclude sustained combustion of such materials.

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with 312 IAC 25-6-72 through 312 IAC 25-6-74.

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), other applicable air and water quality laws and regulations, and health and safety standards.

(Natural Resources Commission; 312 IAC 25-4-83; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3471, eff Dec 1, 2001)

312 IAC 25-4-84 Underground mining permit applications; reclamation plan; fish and wildlife protection and enhancement

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 84. Each plan shall describe how the permittee will minimize, to the extent possible using best technology currently available, disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations and how these values will be enhanced where practicable. If the plan does not include enhancement measures, the plan shall explain why such measures are not practicable. The plan shall comply with the following requirements:

(1) The plan shall be consistent with 312 IAC 25-6-109.

(2) The plan shall apply, at a minimum, to species and habitats identified under section 70 of this rule.

(3) The plan shall include a description of the following:

(A) Any measures necessary to comply with the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

(B) Protective measures that will be used during active mining, which may include buffer zones, selective location and special design of roads and power lines, and surface water monitoring.

(C) Enhancement measures that will be used during and after reclamation to develop or improve aquatic and terrestrial habitats, such as the following:

(i) Replacement of streams and wetlands.

(ii) Retention of ponds, impoundments, and depressions that seasonally impound water.

(iii) Replacement of perches and nest boxes.

(iv) Construction or development of terrain features that provide shelter, cover, protection, or nesting places for wildlife species.

(Natural Resources Commission; 312 IAC 25-4-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3472, eff Dec 1, 2001)

312 IAC 25-4-85 Underground mining permit applications; reclamation plan; protection of hydrologic balance

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 784.14

Sec. 85. (a) Each reclamation plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed underground mining activities, through bond release, under 312 IAC 25-6-70 through 312 IAC 25-6-132, to ensure the protection of the following:

(1) The quality of surface and ground water in the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities.

(2) The rights of present users to that surface and ground water.

(3) The quantity of surface and ground water in the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities, or to provide alternative sources of water, under section 74 of this rule and 312 IAC 25-6-88, where the protection of quantity cannot be ensured.

(4) Water quality by locating openings for mines under 312 IAC 25-6-85.

(5) The prevention of material damage outside the permit area.

(6) Compliance with applicable federal and state water quality laws and regulations.

(7) The hydrologic balance within the permit and adjacent areas.

(b) The description in subsection (a) shall include the following:

(1) A plan for the control, under 312 IAC 25-6-70 through 312 IAC 25-6-132, of surface and ground water drainage into, through, and out of the proposed permit area.

(2) A plan for the treatment, where required under 312 IAC 25-6-70 through 312 IAC 25-6-132, of surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 312 IAC 25-6-77, according to the more stringent of the following:

(A) 312 IAC 25-6-70 through 312 IAC 25-6-132.

(B) Other applicable state and federal laws.

(3) A plan for the collection, recording, and reporting of ground and surface water quality and water quantity data under 312 IAC 25-6-86.

(4) A plan to avoid acid or toxic drainage.

(5) A plan to prevent, to the extent possible using the best technology currently available, adding contributions of suspended solids to stream flow.

(6) A plan to provide water treatment facilities when needed.

(7) A plan to control drainage.

(8) A plan to demonstrate compliance with 312 IAC 25-6-76.5.

(c) The description in subsection (a) shall include the following:

(1) A determination of the probable hydrologic consequences (PHC) of the proposed underground 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 following:

(A) The contents of dissolved and total suspended solids.

(B) Total iron.

(C) pH.

(D) Total manganese.

(E) Other parameters required by the director.

(2) Whether the underground mining activities may result in contamination, diminution, or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

(d) Sampling and analysis shall be conducted under 312 IAC 25-6-86. Information shall be provided as follows:

(1) 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.

(2) The PHC determination shall include findings on the following:

(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) What impact the proposed operation will have on the following:

(i) Sediment yields 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.

(v) Other characteristics as required by the director.

(3) Any application for a permit revision shall be reviewed by the director to determine whether a new or updated PHC determination shall be required.

(e) Each plan shall contain a detailed description, with appropriate drawings, of permanent entry seals and down slope barriers, designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.

(f) The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under subsection (c) and shall include preventive and remedial measures. *(Natural Resources Commission; 312 IAC 25-4-85; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3472, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3862, eff Feb 1, 2004)*

312 IAC 25-4-86 Underground mining permit applications; reclamation plan; postmining land uses

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 86. (a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, and the relationship of the proposed use to existing land use policies and plans. The description shall explain each of the following:

(1) How the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use.

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 312 IAC 25-6-128.

(3) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(c) The applicant may, if approved by the director, request that information required by this section for consideration of any proposed postmining land use changes be submitted toward the end of the life of an underground mine if the applicant demonstrates in the original application that the land will be returned to the appropriate land use capability as required in 312 IAC 25-6-128. The request for an alternative postmining land use change may be made through the permit revision of renewal provisions in sections 126 through 134 of this rule. *(Natural Resources Commission; 312 IAC 25-4-86; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3473, eff Dec 1, 2001)*

312 IAC 25-4-87 Underground mining permit applications; reclamation plan for siltation structures, impoundments, dams, embankments, and refuse piles Version a

Authority: IC 14-34-2-1
Affected: IC 14-34

NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 87. (a) Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste dam, embankment, or refuse pile within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

(B) Contain a description, map, and cross section of the structure and its location.

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as geology, land surveying, and landscape architecture.

(B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe the operation and maintenance requirements for each structure.

(D) Describe the timetable and plans to remove each structure if appropriate.

(E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a) and include a copy of the plans for design and construction approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-81. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-84.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-84, 30 CFR 77.216-1, and 30 CFR 77.216-2.

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-98 through 312 IAC 25-6-102.

(e) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-98 and 312 IAC 25-6-106 through 312 IAC 25-6-108. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a),

each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

(A) Strength parameters.

(B) Pore pressures.

(C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(g) If the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:

(1) structure is twenty (20) feet or higher;

(2) drainage area above the structure is one (1) square mile or larger; or

(3) volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, department of natural resources, and prior approval shall be obtained from the director before construction of the structure begins. If necessary to protect the health or safety of persons or property or the environment, even though the volume of water impounded is less than one hundred (100) acre-feet, the director may require an application to be made. *(Natural Resources Commission; 312 IAC 25-4-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3473, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2448, eff Jan 1, 2005)*

312 IAC 25-4-87 Underground mining permit applications; reclamation plan for siltation structures, impoundments, dams, embankments, and refuse piles Version b

Authority: IC 14-10-2-4; IC 14-34-2-1

Affected: IC 14-34

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 87. (a) Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste dam, embankment, or refuse pile within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

(B) Contain the following:

(i) A description, map, and cross section of the structure and its location.

(ii) Preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

(iii) A survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(iv) A certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as the following:

(i) Geology.

(ii) Land surveying.

(iii) Landscape architecture.

(B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe the following:

(i) The operation and maintenance requirements for each structure.

(ii) The timetable and plans to remove each structure if appropriate.

(D) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a) and include a copy of the plans for design and construction approved by the Mine Safety and Health Administration for those identified

structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-81. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-84.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of the following:

(1) 312 IAC 25-6-84.

(2) 30 CFR 77.216-1.

(3) 30 CFR 77.216-2.

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-98 through 312 IAC 25-6-102.

(e) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-98 and 312 IAC 25-6-106 through 312 IAC 25-6-108. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current, prudent engineering practice for the following:

(A) Size of the dam or embankment.

(B) Quantity of material to be impounded.

(C) Subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of:

(A) mudflows;

(B) rock-debris falls; or

(C) other landslides;

into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to, the following:

(A) Strength parameters.

(B) Pore pressures.

(C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(g) If the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:

(1) structure is twenty (20) feet or higher;

(2) drainage area above the structure is one (1) square mile or larger; or

(3) volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, department of natural resources, and prior approval shall be obtained from the director before construction of the structure begins. *(Natural Resources Commission; 312 IAC 25-4-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3473, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2448, eff Jan 1, 2005; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site)*

312 IAC 25-4-88 Underground mining permit applications; reclamation plan; protection of public parks and historic lands

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 88. (a) For any public parks or any historic lands listed on the National Register of Historic Places or the Indiana state register of historic sites and structures that may be adversely affected by the proposed operations, each plan shall describe the measures to be used:

(1) to prevent adverse impacts; or

(2) if valid existing rights exist or joint agency approval is to be obtained under 312 IAC 25-3-1(3), to minimize adverse impacts.

(b) The director may impose conditions that require the applicant to protect historic or archaeological properties listed on, or eligible for listing on, the National Register of Historic Places or the Indiana state register of historic sites and structures through appropriate mitigation and treatment measures consistent with the standards established under 312 IAC 21-3. Mitigation and treatment measures must be approved by the director after consideration of the comments of the division of historic preservation and archaeology. Required measures that avoid impacts must remain in place throughout all mining and reclamation operations. Such measures that involve the mitigation of impacts through excavation or documentation may be taken after permit issuance provided they are completed before the property is affected by any mining operation. *(Natural Resources Commission; 312 IAC 25-4-88; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3474, eff Dec 1, 2001)*

312 IAC 25-4-89 Underground mining permit applications; reclamation plan; relocation or use of public roads

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 89. Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 312 IAC 25-3-2(e)(4), the applicant seeks to have the director approve:

(1) conducting the proposed underground mining activities within one hundred (100) feet, measured horizontally, of the right-of-way of any public road, except where mine access or haul roads join that right-of-way; or

(2) relocating a public road.

(Natural Resources Commission; 312 IAC 25-4-89; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3475, eff Dec 1, 2001)

312 IAC 25-4-90 Underground mining permit applications; reclamation plan; underground development waste

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 90. Each plan shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 312 IAC 25-6-98. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to section 54 of this rule. *(Natural Resources Commission; 312 IAC 25-4-90; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3475, eff Dec 1, 2001)*

312 IAC 25-4-91 Underground mining permit applications; reclamation plan; subsidence control plan

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 784.20

Sec. 91. (a) Each application must include the following:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the director, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(3) A survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area

encompassed by the applicable angle of draw, as well as a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in 312 IAC 25-6-123(c)(4). The applicant must pay for any technical assessment or engineering evaluation used to determine the premining condition or value of such noncommercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the director.

(b) If the survey conducted under subsection (a) shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the director agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the director determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence plan that contains the following provisions:

(1) A description of the method of coal removal (such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods), including the size, sequence, and timing of the development of underground workings.

(2) A map of the underground workings that:

(A) describes the location and extent of the areas in which planned subsidence mining methods will be used; and

(B) identifies all areas where the measures described in subdivisions (4), (5), and (7) will be taken:

(i) to prevent or minimize subsidence and subsidence-related damage; and

(ii) when applicable, to correct subsidence-related material damage.

(3) A description of the physical conditions, such as dept of cover, seam thickness, and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage.

(4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 312 IAC 25-6-123(c).

(5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to, the following:

(A) Backstowing or backfilling of voids.

(B) Leaving support pillars of coal.

(C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place.

(D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(6) A description of the anticipated effects of planned subsidence, if any.

(7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair.

(8) A description of the measures to be taken in accordance with 312 IAC 25-6-88 and 312 IAC 25-6-123(c) to replace adversely affected protected water supplies or to mitigate or remedy and any subsidence-related material damage to the land and protected structures.

(9) Other information specified by the director as necessary to demonstrate that the operations will be conducted in accordance with 312 IAC 25-6-123.

(Natural Resources Commission; 312 IAC 25-4-91; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3475, eff Dec 1, 2001)

312 IAC 25-4-92 Underground mining permit applications; reclamation plan; diversions
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 92. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 312 IAC 25-6-78 and 312 IAC 25-6-79.
(Natural Resources Commission; 312 IAC 25-4-92; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3476, eff Dec 1, 2001)

312 IAC 25-4-93 Underground mining permit applications; reclamation plan; maps
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 93. Each application shall contain maps, plans, and cross sections of the proposed permit and adjacent areas as follows:
(1) The maps, plans, and cross sections shall show the underground mining activities to be conducted, the land to be affected throughout the operations, and any change in a facility or feature to be caused by the proposed operations if the facility or feature was shown under sections 78 and 79 of this rule.
(2) The following shall be shown for the proposed permit area:
(A) Buildings, utility corridors, and facilities to be used.
(B) The area of land to be affected within the proposed permit area according to the sequence of mining and reclamation.
(C) Each area of land for which a performance bond will be posted under 312 IAC 25-5.
(D) Each coal storage, cleaning, and loading area.
(E) Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area.
(F) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used.
(G) Each source of waste and each waste disposal facility relating to coal processing or pollution control.
(H) Each facility to be used to protect and enhance fish and wildlife related environmental values.
(I) Each explosive storage and handling facility.
(J) Location of each:
(i) siltation structure;
(ii) permanent water impoundment;
(iii) coal processing waste bank; and
(iv) coal processing waste dam and embankment;
in accordance with section 87 of this rule and disposal areas for underground development waste and excess spoil in accordance with section 90 of this rule.
(K) Each profile, at cross sections specified by the director, of the anticipated final surface configuration to be achieved for the affected areas.
(L) Location of each water and subsidence monitoring point.
(M) Location of each facility that will remain on the proposed permit area as a permanent feature after the completion of underground mining activities.
(3) Maps, plans, and cross sections required under subdivision (2)(D) through (2)(F) and 2(I) through (2)(K) shall be prepared by, or under the direction of, and certified by a professional engineer or professional geologist, with necessary assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross sections of:
(A) siltation structures may only be prepared by a registered engineer; and
(B) excess spoil and underground development waste facilities may only be prepared by a registered professional engineer.
(4) All monitoring locations used to demonstrate compliance with 312 IAC 25-6-76.5.
(Natural Resources Commission; 312 IAC 25-4-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3476, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3863, eff Feb 1, 2004)

312 IAC 25-4-94 Underground mining permit applications; reclamation plan; transportation facilities
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 94. Each application shall contain a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(1) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(2) A description of measures to be taken to comply with 312 IAC 25-6-129.

(3) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

(Natural Resources Commission; 312 IAC 25-4-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3477, eff Dec 1, 2001)

312 IAC 25-4-95 Underground mining permit applications; reclamation plan for road systems

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 95. (a) Each applicant for an underground coal mining and reclamation permit shall submit plans and drawings for each road, as defined in 312 IAC 25-1-126, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include the following:

(1) A map, appropriate cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low water crossings, and drainage structures.

(2) The drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the director in accordance with 312 IAC 25-6-129.

(3) The drawings and specifications for each proposed ford of an intermittent or perennial stream that is used as a temporary route, as necessary for approval of the ford by the director in accordance with 312 IAC 25-6-129 and 312 IAC 25-6-130.

(4) A description of measures to be taken to obtain approval of the director for alteration or relocation of a natural stream channel under 312 IAC 25-6-130.

(5) The drawings and specifications for each low water crossing of perennial or intermittent stream channels so that the director can maximize the protection of the stream in accordance with 312 IAC 25-6-129 and 312 IAC 25-6-130.

(6) A description of the plans to remove and reclaim each road that would not be retained under an approved postmining land use and the schedule for this removal and reclamation.

(b) The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads, as meeting:

(1) the requirements of this article;

(2) current, prudent engineering practices; and

(3) any design criteria established by the director.

(c) Each primary road shall be in compliance with the minimum static safety factor of one and three-tenths (1.3) for all embankments specified in 312 IAC 25-6-130 or shall comply with the design requirements of 312 IAC 25-6-130. *(Natural Resources Commission; 312 IAC 25-4-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3477, eff Dec 1, 2001)*

312 IAC 25-4-96 Underground mining permit applications; reclamation plan; return of coal processing waste to abandoned underground workings

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 96. (a) Each plan shall describe the design, operation, and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the director under 312 IAC 25-6-41.

(b) Each plan shall describe the following:

(1) The source and quality of waste to be stowed.

(2) The area to be backfilled.

(3) The percent of the mine void to be filled.

(4) The method of constructing underground retaining walls.

(5) The influence of the backfilling operation on active underground mine operations.

(6) The surface area to be supported by the backfill.

(7) The anticipated occurrence of surface effects following backfilling.
(c) The applicant shall describe the following:
(1) The source of the hydraulic transport mediums.
(2) The method of dewatering the placed backfill.
(3) The retainment of water underground.
(4) The treatment of water if released to surface streams.
(5) The effect on the hydrologic regime.
(d) The plan shall describe the following:
(1) Each permanent monitoring well to be located in the backfilled area.
(2) The stratum underlying the mined coal.
(3) The gradient from the backfilled area.
(e) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the director from requirements specifying the hydrologic monitoring.
(f) Approval is required from the Mine Safety and Health Administration for return of coal processing waste to abandoned underground workings. *(Natural Resources Commission; 312 IAC 25-4-96; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3478, eff Dec 1, 2001)*

312 IAC 25-4-97 Underground mining permit applications; reclamation plan; air pollution control
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 97. The permit application under sections 81 through 96 of this rule and this section shall contain one (1) of the following for the proposed mining operation:
(1) A copy of an active Indiana air pollution control board operation permit.
(2) A copy of completed application for an Indiana air pollution control board operation permit.
(3) A written statement from the Indiana air pollution control board indicating that such a permit is not necessary.
(Natural Resources Commission; 312 IAC 25-4-97; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3478, eff Dec 1, 2001)

312 IAC 25-4-98 Special categories of mining; applicability
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 98. This section and sections 99 through 107 of this rule establish the minimum requirements for regulatory program provisions for permits for certain categories of surface coal mining and reclamation operations. These requirements are in addition to the general permit requirements contained in this rule. Sections 1 through 39 of this rule apply to these operations unless otherwise specifically provided in this section and sections 99 through 107 of this rule. *(Natural Resources Commission; 312 IAC 25-4-98; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3478, eff Dec 1, 2001)*

312 IAC 25-4-99 Special categories of mining; experimental practices mining
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 99. (a) Experimental practices provide a variance from environmental protection performance standards of IC 14-34 and 312 IAC 25-6-1 through 312 IAC 25-6-148 for experimental or research purposes or allow an alternative postmining land use and may be undertaken if they are approved by the director and the director of the Office of Surface Mining and if they are incorporated in a permit or permit revision issued in accordance with the requirements of 312 IAC 25-6-1 through 312 IAC 25-6-148.
(b) An application for an experimental practice shall contain descriptions, maps, plans, and data that show the following:
(1) The nature of the experimental practice, including the following:
(A) A description of the performance standards for which variances are requested.
(B) The duration of the experimental practice.
(C) Any special monitoring that will be conducted.

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis.

(3) That the experimental practice:

(A) is potentially more, or at least as, environmentally protective during and after mining operations as would otherwise be required by standards under 312 IAC 25-6-1 through 312 IAC 25-6-148; and

(B) will not reduce the protection afforded public health and safety below that provided by the requirements of 312 IAC 25-6-1 through 312 IAC 25-6-148.

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the director and the director of the Office of Surface Mining to:

(A) evaluate the effectiveness of the experimental practice; and

(B) identify, at the earliest possible time, potential risk to the environment and public health and safety that may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of sections 109 through 113 of this rule.

(d) No application for an experimental practice under this section shall be approved until the director first finds the following in writing, and the director of the Office of Surface Mining then concurs:

(1) The experimental practice encourages either of the following:

(A) Advances in mining and reclamation technology.

(B) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis.

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards under 312 IAC 25-6-1 through 312 IAC 25-6-148.

(3) The mining operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice.

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards under 312 IAC 25-6-1 through 312 IAC 25-6-148.

(e) Experimental practices granting variances from the special environmental protection performance standards of IC 14-34-10 through IC 14-34-11 applicable to prime farmland shall be approved only after consultation with the United States Department of Agriculture, Soil Conservation Service.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording, and reporting program set forth in the application and shall satisfy such additional requirements as the director or the director of the Office of Surface Mining may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the director at a frequency set forth in the approved permit, but no less frequently than every two and one-half (2½) years. After review, the director may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the director shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of sections 122 through 123 of this rule.

(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of section 127 of this rule and approved by the director. Any revisions that propose significant alterations in the experimental practice shall, at a minimum, be subject to the following:

(1) The notice, hearing, and public participation requirements of sections 109 through 113 of this rule.

(2) Concurrence by the director of the Office of Surface Mining; however, revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the director of the Office of Surface Mining.

(Natural Resources Commission; 312 IAC 25-4-99; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3479, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-4-100 Special categories of mining; steep slope procedures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 100. (a) This section applies to any permittee who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominately flat area, but on which an occasional steep slope is encountered as the mining operation proceeds.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 312 IAC 25-6-144.
(Natural Resources Commission; 312 IAC 25-4-100; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3480, eff Dec 1, 2001)

312 IAC 25-4-101 Special categories of mining; approximate original contour variance for steep slope mining; permits

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 101. (a) The director may issue a permit for steep slope surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour after first finding in writing on the basis of a complete application that all of the following requirements are met:

(1) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an alternative postmining land use.

(2) The proposed alternative postmining land use, after consultation with the appropriate land use planning agencies, if any, is found to constitute an equal or better economic or public use.

(3) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 312 IAC 25-6-64 or 312 IAC 25-6-128.

(4) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if all of the following conditions are met:

(A) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining so as to improve public or private uses or the ecology of such waters, or there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws.

(B) The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

(C) The appropriate state environmental agency approves the plan.

(5) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested or given consent in writing as part of the application that a variance be granted. The request or consent shall be made or given separately from any other surface owner consent given for the operation and shall show an understanding that the variance could not be granted without the surface owner's request or consent.

(6) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 312 IAC 25-6-144.

(7) All other requirements of IC 14-34 and this article will be met by the proposed operations.

(8) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(9) Only the amount of spoil as is necessary to:

(A) achieve the postmining land use;

(B) ensure the stability of spoil retained on the bench; and

(C) meet all other requirements of IC 14-34 and this article;

is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 312 IAC 25-6-34, 312 IAC 25-6-50, or 312 IAC 25-6-98.

(10) Federal, Indiana, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(b) If a variance is granted under this section:

(1) the requirements of 312 IAC 25-6-144 shall be made a specific condition of the permit; and

(2) the permit shall be specifically marked to indicate that it contains a variance from approximate original contour.

(c) Permits incorporating a variance from approximate original contour will be reviewed by the director to evaluate the progress and development of the mining activities, and to establish that the permittee is proceeding in accordance with the terms of the variance. Permit reviews under this subsection shall be conducted according to the following timeframes:

(1) Within the sixth month preceding the third year from the date of its issuance.

(2) Before each permit renewal.

(3) Not later than the middle of each permit term.

(d) If the permittee demonstrates to the director at any of the times specified in subsection (c) that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of IC 14-34, and this article, the review required at that time need not be held.

(e) The terms and conditions of a permit incorporating variance under this section may be modified at any time by the director, if the director determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of IC 14-34 and this article. *(Natural Resources Commission; 312 IAC 25-4-101; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3480, eff Dec 1, 2001)*

312 IAC 25-4-102 Special categories of mining; prime farmland Version a

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34; 30 CFR 785.17

NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 102. (a) In an initial permit application under this article for an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date, the applicant shall set forth the geographical area that is encompassed by the operation. The permit applied for, however, need only cover the area to be affected during the period of the permit for which the application is made. The director shall determine the geographical areas that are exempt from the prime farmland provisions of IC 14-34 and this article. In making the determination, the director shall consider all relevant factors bearing upon the extent of the geographical area upon which the applicant intended to conduct surface coal mining operations as of August 3, 1977, including the following:

(1) A map showing the geographical location of the area for which the determination is requested and the area previously affected by surface coal mining and reclamation operations.

(2) Information concerning the contractual coal sales commitments that existed before August 4, 1977, for the mining operation.

(3) Maps and other documents that identify the location and extent of the applicant's surface and mineral rights control for all properties within the area upon which the determination is requested and whether the applicant:

(A) acquired the rights before August 4, 1977;

(B) acquired the rights after August 3, 1977; or

(C) does not control the rights currently.

(4) Mining plans, maps, or other documents prepared before August 4, 1977, that identify the area intended to be mined by the existing operations.

(5) Maps or other documents identifying the extent of coal exploration activity performed by the applicant in the area before August 4, 1977.

(6) Copies of any other permits issued to the applicant by governmental agencies before August 4, 1977, with respect to those operations upon those lands for which this determination is sought.

(7) The legal and financial commitments made by the applicant in connection with the mining operation as of August 3, 1977, with respect to those lands for which this determination is requested.

(8) Any other relevant information.

(b) In making the determination required under subsection (a), no one (1) or group of factors is controlling. The determination shall be made by the director based upon all relevant factors of the particular surface coal mining operation for which the permit and determination is sought. The determination applies to all subsequent and continuous permits for the existing surface coal mining operation or until the director determines the operations have permanently ceased.

(c) The requirements of subsection (d) apply to a permittee who conducts or intends to conduct surface coal mining and

reclamation operations on prime farmland historically used for cropland. Subsection (d) does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date.

(d) If land within the proposed permit area is identified as prime farmland under section 39 or 80 of this rule, the applicant shall submit a plan for the mining and restoration of the land. Each plan must include the following:

(1) A soil survey of the permit area under the standards of the National Cooperative Soil Survey and under the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States Natural Resources Conservation Service, including, but not limited to:

(A) soil horizon depths;

(B) pH; and

(C) the range of soil densities;

for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state conservationist, United States Natural Resources Conservation Service. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technical capability to restore the prime farmland within the permit area to the soil reconstruction standards of 312 IAC 25-6-139 through 312 IAC 25-6-143.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of soil under 312 IAC 25-6-139 through 312 IAC 25-6-143.

(3) The location of areas to be used for the separate stockpiling of the soil and a plan for soil stabilization before redistribution.

(4) Applicable agricultural school studies, scientific data from comparable areas, or similar documentation that supports the use of suitable material other than the A horizon, B horizon, or C horizon to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.

(5) A plan describing the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime during the period from completion of regrading until release of the performance bond under 312 IAC 25-5. Proper adjustments must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) A demonstration based on soil surveys, scientific data, or standard agronomic practices that the applicant using the proposed method of reclamation has the capability, within a reasonable time, to achieve equivalent or higher levels of yield after mining as existed before mining.

(7) Current estimated level of yields under high levels of management of prime farmland.

(e) Before any permit is issued for areas that include prime farmland, the director shall consult with the state conservationist of the Natural Resources Conservation Service. The state conservationist shall do the following:

(1) Provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (d).

(2) Suggest revisions resulting in more complete and adequate reconstruction if the state conservationist considers the soil reconstruction methods to be inadequate. The state conservationist has fifteen (15) days after consultation with the director to respond.

(3) Provide to the director a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland descriptions.

(4) Assist the director in determining the adequacy of all soil surveys required in subsection (d)(1) through (d)(3).

(f) A permit for the mining and reclamation of prime farmland may be granted by the director if the director finds, in writing, upon the basis of a complete application, the following:

(1) The approved proposed postmining land use of prime farmland will be cropland.

(2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (d), after consideration of any revisions to that plan suggested by the state conservationist under subsection (e).

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(4) The proposed operations will be conducted in compliance with the requirements of 312 IAC 25-6-139 through 312 IAC 25-6-143 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Waterbodies, if any, to be constructed during mining and reclamation must be located within the postreclamation nonprime farmland portions of the permit area. The creation of any waterbody must be approved by the director, and the consent of all affected property owners within the permit area shall be obtained.

(Natural Resources Commission; 312 IAC 25-4-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3481, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2449, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)

312 IAC 25-4-102 Special categories of mining; prime farmland Version b

Authority: IC 14-10-2-4; IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34; 30 CFR 785.17

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 102. (a) In an initial permit application under this article for an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date, the applicant shall set forth the geographical area that is encompassed by the operation. The permit applied for, however, need only cover the area to be affected during the period of the permit for which the application is made. The director shall determine the geographical areas that are exempt from the prime farmland provisions of IC 14-34 and this article. In making the determination, the director shall consider all relevant factors bearing upon the extent of the geographical area upon which the applicant intended to conduct surface coal mining operations as of August 3, 1977, including the following:

(1) A map showing the geographical location of:

(A) the area for which the determination is requested; and

(B) the area previously affected by surface coal mining and reclamation operations.

(2) Information concerning the contractual coal sales commitments that existed before August 4, 1977, for the mining operation.

(3) Maps and other documents that identify the location and extent of the applicant's surface and mineral rights control for all properties within the area upon which the determination is requested and whether the applicant:

(A) acquired the rights:

(i) before August 4, 1977; or

(ii) after August 3, 1977; or

(B) does not control the rights currently.

(4) Mining plans, maps, or other documents prepared before August 4, 1977, that identify the area intended to be mined by the existing operations.

(5) Maps or other documents identifying the extent of coal exploration activity performed by the applicant in the area before August 4, 1977.

(6) Copies of any other permits issued to the applicant by governmental agencies before August 4, 1977, with respect to those operations upon those lands for which this determination is sought.

(7) The legal and financial commitments made by the applicant in connection with the mining operation as of August 3, 1977, with respect to those lands for which this determination is requested.

(8) Any other relevant information.

(b) In making the determination required under subsection (a), no one (1) or group of factors is controlling. The determination shall be made by the director based upon all relevant factors of the particular surface coal mining operation for which the permit and determination is sought. The determination applies:

(1) to all subsequent and continuous permits for the existing surface coal mining operation; or

(2) until the director determines the operations have permanently ceased.

(c) The requirements of subsection (d) apply to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. Subsection (d) does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date.

(d) If land within the proposed permit area is identified as prime farmland under section 39 or 80 of this rule, the applicant shall submit a plan for the mining and restoration of the land. Each plan must include the following:

(1) A soil survey of the permit area under the standards of the National Cooperative Soil Survey and under the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States Natural Resources Conservation Service, including, but not limited to:

(A) soil horizon depths;

(B) pH; and

(C) the range of soil densities;

for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state conservationist, United States Natural Resources Conservation Service. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technical capability to restore the prime farmland within the permit area to the soil reconstruction standards of 312 IAC 25-6-139 through 312 IAC 25-6-143.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of soil under 312 IAC 25-6-139 through 312 IAC 25-6-143.

(3) The location of areas to be used for the separate stockpiling of the soil and a plan for soil stabilization before redistribution.

(4) Applicable:

(A) agricultural school studies;

(B) scientific data from comparable areas; or

(C) similar documentation;

that supports the use of suitable material other than the A horizon, B horizon, or C horizon to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.

(5) A plan describing the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime during the period from completion of regrading until release of the performance bond under 312 IAC 25-5. Proper adjustments must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) A demonstration based on:

(A) soil surveys;

(B) scientific data; or

(C) standard agronomic practices;

that the applicant using the proposed method of reclamation has the capability, within a reasonable time, to achieve equivalent or higher levels of yield after mining as existed before mining.

(7) Current estimated level of yields under high levels of management of prime farmland.

(8) If the applicant proposes to establish commercial forest resources on the prime farmland, the plan must also include the following:

(A) A commercial forest planting plan that shall include the following:

(i) A stocking rate.

(ii) A plan for replanting as needed.

(B) A commercial forest management plan.

(C) Documentation of landowner consent.

(e) Before any permit is issued for areas that include prime farmland, the director shall consult with the state conservationist of the Natural Resources Conservation Service. The state conservationist shall do the following:

(1) Provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (d).

(2) Suggest revisions resulting in more complete and adequate reconstruction if the state conservationist considers the soil reconstruction methods to be inadequate. The state conservationist has fifteen (15) days after consultation with the director to respond.

(3) Provide to the director a list of prime farmland soils and their:

(A) location;

(B) physical and chemical characteristics;

(C) crop yields; and

(D) associated data necessary to support adequate prime farmland descriptions.

(4) Assist the director in determining the adequacy of all soil surveys required in subsection (d)(1) through (d)(3).

(f) A permit for the mining and reclamation of prime farmland may be granted by the director if the director finds, in writing, upon the basis of a complete application, the following:

(1) The approved proposed postmining land use of prime farmland will be cropland.

(2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (d), after consideration of any revisions to that plan suggested by the state conservationist under subsection (e).

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(4) The proposed operations will be conducted in compliance with the requirements of 312 IAC 25-6-139 through 312 IAC 25-6-143 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed before mining. Waterbodies, if any, to be constructed during mining and reclamation must be located within the postreclamation nonprime farmland portions of the permit area. The:

(A) creation of any waterbody must be approved by the director; and

(B) consent of all affected property owners within the permit area shall be obtained.

(Natural Resources Commission; 312 IAC 25-4-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3481, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2449, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214; filed Sep 19, 2006, 9:27 a.m.: 20061018-IR-312060067FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site)

312 IAC 25-4-103 Special categories of mining; variances for delay in contemporaneous reclamation requirement in combined surface and underground operations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 103. (a) This section applies to any person who conducts or intends to conduct combined surface mining activities and underground mining activities, where contemporaneous reclamation as required by 312 IAC 25-6-48 is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operation for the surface mining activities can be completed, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

(b) Any person who desires to obtain a variance under this section shall file with the director complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps, and plans that do the following:

(1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal.

(2) Show how multiple future disturbances of surface lands or waters will be avoided.

(3) Identify the specific surface areas for which a variance is sought and the particular sections of IC 14-34 and this article.

(4) Show how the activities will comply with 312 IAC 25-6-134 through 312 IAC 25-6-136 and other applicable requirements.

(5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities.

(6) Provide an assessment of the adverse environmental consequences and damages, if any, that may result if the reclamation of surface mining activities is delayed.

(7) Show how off-site storage of spoil will be conducted to comply with IC 14-34 and 312 IAC 25-6-34.

(c) A permit incorporating a variance under this section shall be issued by the director after the director finds, in writing, upon the basis of a complete application filed in accordance with this section the following:

(1) The applicant has presented as part of the permit application specific, feasible plans for the proposed underground mining activities.

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land waters.

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority.
(4) The surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities.
(5) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by IC 14-34 and 312 IAC 25-6-5 through 312 IAC 25-6-69.
(6) The operations will, insofar as a variance is authorized, be conducted in compliance with 312 IAC 25-6-134 through 312 IAC 25-6-136.
(7) Provisions for off-site storage of spoil will comply with the appropriate requirements of IC 14-34 and 312 IAC 25-6-34.
(8) Liability under the performance bond required to be filed by the applicant with the director under 312 IAC 25-5, and shall be for the duration of the underground mining activities and until all requirements of 312 IAC 25-5 have been complied with.
(9) The permit for the surface mining activities contains specific conditions:
(A) delineating the particular surface areas for which a variance is authorized;
(B) identifying the particular requirements of 312 IAC 25-6-134 through 312 IAC 25-6-136 that are to be complied with in lieu of the otherwise applicable provisions of IC 14-34 and 312 IAC 25-6-5 through 312 IAC 25-6-69; and
(C) providing a detailed schedule for compliance with the particular requirements of 312 IAC 25-6-134 through 312 IAC 25-6-136 identified in clause (B).

(d) Variances granted under permits issued under this section will be reviewed by the director within three (3) years from the dates of issuance of the permit and any permit renewals. *(Natural Resources Commission; 312 IAC 25-4-103; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3482, eff Dec 1, 2001)*

312 IAC 25-4-104 Special categories of mining; augering

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 104. (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing auguring operations.

(b) Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the auguring methods to be used and the measures to be used to comply with 312 IAC 25-6-137 and 312 IAC 25-6-138. *(Natural Resources Commission; 312 IAC 25-4-104; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3483, eff Dec 1, 2001)*

312 IAC 25-4-105 Special categories of mining; in situ processing activities

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 105. (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this section shall be made according to all requirements of sections 1 through 104 of this rule, this section, and sections 106 through 134 of this rule applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with 312 IAC 25-6-147 and 312 IAC 25-6-148, including the following:
(1) Delineation of proposed holes, wells, and production zones for approval of the director.
(2) Specifications of drill holes and casings proposed to be used.
(3) A plan for treatment, confinement, or disposal of all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard caused by the mining and recovery process.
(4) Plans for monitoring surface water, ground water, and air quality as required by the director.

(c) No permit shall be issued for operations covered by this section unless the director first finds, in writing, upon the basis of a complete application made in accordance with subsection (b), that the operation will be conducted in compliance with sections 1 through 39 of this rule relating to underground mining activities and 312 IAC 25-6-70 through 312 IAC 25-6-132, 312 IAC 25-6-

147, and 312 IAC 25-6-148. *(Natural Resources Commission; 312 IAC 25-4-105; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3483, eff Dec 1, 2001)*

312 IAC 25-4-105.5 Special categories of mining; lands eligible for remining

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 105.5. (a) This section contains permitting requirements to implement section 114(d) of this rule. Any person who submits a permit application to conduct surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this rule applicable to surface coal mining and reclamation operations. The application shall contain the following:

(1) To the extent not otherwise addressed in the permit application, an identification of potential environmental and safety problems related to prior mining activity at the site that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation that shall include the following:

(A) Visual observation at the site.

(B) A record review of past mining at the site.

(C) Environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred to in subdivision (1), a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this section shall not apply after September 30, 2004. *(Natural Resources Commission; 312 IAC 25-4-105.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2451, eff Jan 1, 2005)*

312 IAC 25-4-106 Special categories of mining; coal preparation plants not located within the permit area of a specific mine

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 106. (a) This section applies to a person who operates or intends to operate a coal preparation plant outside the permit area of a specific mine. That person must obtain a permit from the director under the regulatory program in accordance with this section.

(b) Any application for a permit for operations under this section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps, and cross sections of the construction, operation, maintenance, and removal of the coal preparation plant. The plan shall demonstrate that those operations will be conducted in compliance with 312 IAC 25-6-145 and 312 IAC 25-6-146. *(Natural Resources Commission; 312 IAC 25-4-106; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3484, eff Dec 1, 2001)*

312 IAC 25-4-107 Special categories of mining; coal preparation plants not located within the permit area of a specific mine which were not regulated prior to the effective date of this rule

Authority: IC 14-34-2-1
Affected: IC 4-21.5-1-6; IC 14-34-18-3

Sec. 107. (a) This section applies to a person who operates or intends to operate a coal preparation plant outside the permit area of a specific mine and who was not subject to this article before February 1, 1994.

(b) No person shall operate a coal preparation plant after September 29, 1994, unless that person applies for a permit under section 106 of this rule by April 2, 1994.

(c) Except as prohibited under IC 14-34-18-3 or 312 IAC 25-3-1, a person who operates a coal preparation plant that was not subject to this article before February 1, 1994, shall not continue to operate without a permit after September 29, 1994, unless:

(1) a permit application is timely filed under subsection (b); and

(2) the commission has not entered a final agency action under IC 4-21.5-1-6 with respect to issuance or denial of the permit. *(Natural Resources Commission; 312 IAC 25-4-107; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3484, eff Dec 1, 2001)*

312 IAC 25-4-108 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; responsibility

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 108. The applicant shall provide all information in a complete permit application for review by the director in accordance with this section and sections 109 through 121 of this rule. *(Natural Resources Commission; 312 IAC 25-4-108; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3484, eff Dec 1, 2001)*

312 IAC 25-4-109 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; responsibility

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 109. (a) An applicant for a permit, or revision or renewal of a permit, shall place an advertisement in a newspaper of general circulation that is published in the county in which the proposed surface coal mining and reclamation operation is located at least once a week for four (4) consecutive weeks. As used in this section, "published" refers to the process of composing, issuing, and distributing the newspaper to the public and does not refer only to the mechanical work of printing. If the proposed operation lies within more than one (1) county, the advertisement shall be placed in one (1) newspaper in each county where the proposed operation will lie. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement must include, at a minimum, the following information:

(1) The name and business address of the applicant.

(2) A map or description that accomplishes all of the following:

(A) Clearly shows or describes the exact location and boundaries of the proposed permit area, including:

(i) a legal description of the area by quarter, quarter section, township, range, and county; and

(ii) the distance and direction of the site from a town, city, or another permanent feature sufficient for the operation to be readily located by a local resident.

(B) States the name of each United States Geological Survey seven and five-tenths (7.5) minute quadrangle map that contains the area described.

If a map is used, it shall indicate the north direction.

(3) The location where a copy of the application is available for public inspection.

(4) The names of the property owners of the property included in the application.

(5) The name and address of the director to which written comments, objections, or requests for informal conferences on the application may be submitted under sections 110 through 112 of this rule.

(6) If an applicant seeks a permit to mine within one hundred (100) feet of the outside right-of-way of a public road or to relocate or close a public road:

(A) a concise statement describing the public road;

(B) the particular part to be relocated or closed;

(C) where the relocation or closure is to occur; and

(D) the approximate timing and duration of the relocation.

(7) A copy of the advertisement shall be mailed to the following:

(A) Each person identified in the application as owners of record of all surface and subsurface areas adjacent to any part of the permit area.

(B) Every person who has requested notice of such application.

(8) If the application includes a request for an experimental practice under section 99 of this rule, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(9) The applicant shall make an application for a permit, or significant revision or renewal of a permit under sections 127 through 131 of this rule, available for the public to inspect and copy by filing a full copy of the application or permit with the appropriate library as required by this section. This copy of the application need not include confidential information exempt from disclosure under sections 15, 30, and 113 of this rule.

(b) The applicant must file in the main public library identified in this subsection, for each county where the proposed mining

is to occur, a complete copy of the application submitted to the director. This copy of the application is available for public inspection and reproduction. The main public library is the main branch of the library specified for the county as follows:

(1) Clay County, Brazil Public Library.
(2) Crawford County, Crawford County Public Library.
(3) Daviess County, Washington Carnegie Public Library.
(4) Dubois County, Jasper Public Library.
(5) Fountain County, Covington Public Library.
(6) Gibson County, Princeton Public Library.
(7) Greene County, Linton Public Library.
(8) Knox County, Knox County Public Library.
(9) Lawrence County, Lawrence County Public Library.
(10) Martin County, Shoals Public Library.
(11) Monroe County, Monroe County Public Library.
(12) Orange County, Paoli Public Library.
(13) Owen County, Spencer-Owen County Public Library.
(14) Parke County, Rockville Public Library.
(15) Perry County, Tell City-Perry County Public Library.
(16) Pike County, Petersburg and Pike County Public Library.
(17) Posey County, Alexandrian Free Public Library.
(18) Spencer County, Rockport-Ohio Township Public Library.
(19) Sullivan County, Sullivan County Public Library.
(20) Vanderburgh County, Evansville-Vanderburgh County Public Library.
(21) Vermillion County, Clinton Public Library.
(22) Vigo County, Vigo County Public Library.
(23) Warrick County, Boonville-Warrick County Public Library.
(24) Warren County, Williamsport-Washington Township Public Library.

(c) The applicant shall file the copy of the complete application under subsection (a)(9) by the first date of the newspaper advertisement of the application. The applicant shall file any subsequent modification of the application in the library described in subsection (b) for each county where mining is to occur at the same time the modification is submitted to the director.

(d) This subsection establishes standards with respect to the placement of a copy of the application in a library as required under subsections (b) through (c) as follows:

(1) The applicant shall pay the library a fifty dollar ($50) nonrefundable fee.
(2) The applicant may remove the application or permit from the library only after all bond has been released from the permit.
(3) If the applicant does not remove the application or permit from the library, the library, at its discretion, may return the application or permit to the applicant or destroy it after all bond has been released from the permit or retain the application or permit as its own.
(4) An accurate and complete copy of the application or permit, except information exempted from public disclosure under sections 15, 30, and 113 of this rule, shall remain on file at the library and the office of the division of reclamation nearest the mining operation until final bond release and shall be available for public inspection and copying at a reasonable charge during normal business hours.
(5) The applicant shall not be responsible for the maintenance of the copy of the application on file with the library.

(e) Upon receipt of a complete application for a permit or a revision or renewal of a permit, the director shall issue written notification of the following:

(1) The applicant's intention to surface mine a particularly described tract of land.
(2) The application number.
(3) Where a copy of the application may be inspected.
(4) Where comments on the application may be submitted under section 110 of this rule.

(f) A copy of the written notification described in subsection (e) shall be sent to the following:

(1) Federal, state, and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including the United States Department of Agriculture Soil Conservation Service, the United States Army Corps of Engineers, the National Park Service, state and federal fish and wildlife agencies, and the state historic preservation officer.

(2) Governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operation.
(3) Sewage and water treatment authorities and water companies either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas.
(4) Operators of any pipeline located within the permit area or the adjacent area.
(5) The federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.
(g) To avoid duplication, the director shall provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the following:
(1) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).
(2) The Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.).
(3) The Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.).
(4) The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).
(5) The Bald Eagle Protection Act, as amended (16 U.S.C. 668a).
(Natural Resources Commission; 312 IAC 25-4-109; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3484, eff Dec 1, 2001)

312 IAC 25-4-110 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; written comments on permit applications

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 110. (a) Written comments on permit applications may be submitted to the director by the public entities to whom notification is provided under section 109(e) of this rule, with respect to the effects of the proposed mining operations on the environment within their area of responsibility.
(b) These comments shall be submitted to the director within thirty (30) days of notification.
(c) The director will immediately transmit a copy of all such comments for filing and public inspection at the library where the applicant filed a copy of the application for permit under section 109(b) of this rule. A copy will also be transmitted to the applicant. *(Natural Resources Commission; 312 IAC 25-4-110; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3486, eff Dec 1, 2001)*

312 IAC 25-4-111 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; right to file written objections

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 111. (a) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the director, within thirty (30) days after the last publication of the newspaper notice required by section 109(a) of this rule.
(b) The director shall, immediately upon receipt of any written objections:
(1) transmit a copy of them to the applicant; and
(2) file a copy for public inspection at the library where the applicant filed a copy of the application for permit under section 109(b) of this rule.
(Natural Resources Commission; 312 IAC 25-4-111; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3486, eff Dec 1, 2001)

312 IAC 25-4-112 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; informal conferences

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3; IC 14-34; 30 CFR 773.13(c)

Sec. 112. (a) Any person having an interest that is or may be adversely affected by the decision on the application or an officer or a head of a federal, state, or local government agency or authority may request, in writing, that the director hold an informal conference on the application for a permit, significant revision to the permit, or renewal of a permit. The request shall:

(1) briefly summarize the issues to be raised by the requestor at the conference;

(2) state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and

(3) be filed with the director no later than thirty (30) days after the last publication of the newspaper advertisement required under section 109(a) of this rule.

(b) Except as provided in subsection (c), if an informal conference is requested in accordance with subsection (a), the director shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(1) If requested under subsection (a)(2), it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(2) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the director in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least two (2) weeks before the scheduled conference.

(3) If requested, in writing, by a conference requestor at a reasonable time before the conference, the director may arrange with the applicant to grant parties to the conference access to the proposed permit area, and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(4) The requirements of IC 4-21.5-3 shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee under 312 IAC 25-5.

(c) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(d) Informal conferences held in accordance with this section may be used by the director as the public hearing required under 312 IAC 25-3-2(e) on proposed relocation or closing of public roads. *(Natural Resources Commission; 312 IAC 25-4-112; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3487, eff Dec 1, 2001)*

312 IAC 25-4-113 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; public availability

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3-5; IC 5-14-3; IC 14-34

Sec. 113. (a) Information contained in a permit application on file with the director is a public record under IC 5-14-3, except as provided in this section.

(b) Information in a permit application that pertains only to the analysis of chemical and physical properties of the coal to be mined (except information regarding mineral or elemental contents of the coal that are potentially toxic in the environment) is confidential.

(c) Unless otherwise provided in this article, information contained in the reclamation plan required under sections 40 through 56 and 81 through 97 of this rule that is not on public file under Indiana law is a trade secret.

(d) The director shall provide for procedures to separate the information that is a public record from the information that is a trade secret.

(e) An applicant must clearly identify information that the applicant wishes to protect as a trade secret and must submit that information separately from other portions of the application.

(f) Information on the nature and location of archaeological resources on public and Indian land, as required under 16 U.S.C. 470aa through 16 U.S.C. 470mm, is confidential.

(g) A person who opposes or seeks disclosure of information that pertains to the analysis of chemical and physical properties of the coal to be mined, confidential information, or information claimed as a trade secret may submit the request under section 110 of this rule. The person seeking or opposing disclosure and the applicant shall be notified, in writing, of an order made by the director with respect to that request. The order is subject to administrative review under IC 4-21.5-3-5 and sections 122 through 123 of this rule. *(Natural Resources Commission; 312 IAC 25-4-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3487, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the*

Interior and notice of that approval being published in the Indiana Register; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2451, eff Jan 1, 2005)

312 IAC 25-4-114 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; review of permit applications

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3-5; IC 4-21.5-5; IC 5-15-3; IC 14-34-4-6; IC 14-34-17

Sec. 114. (a) The director shall review the complete application for a permit, revision or renewal, written comments, written objections submitted, and records of any informal conference or hearing held on the application and issue a written decision either granting, requiring modification of, or denying the application within the following times:

(1) If:

(A) an informal conference is held under section 112 of this rule or a hearing under IC 14-34-4-6, the decision shall be made within sixty (60) days of the close of the conference or hearing unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(2); or

(B) no informal conference is held under section 112 of this rule, or no hearing is held under IC 14-34-4-6, the decision shall be made within one hundred eighty (180) days from the date the administratively complete application is submitted to the director.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of this article and the approved regulatory program.

(b) The director shall conduct a review of violations as follows:

(1) 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 under 312 IAC 25-7, delinquent civil penalties issued under Section 518 of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), or any state's equivalent counterpart, 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 director 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 IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), or any other law, rule, or regulation referred to in this subdivision. In the absence of a failure to abate a cessation order, the director may presume that a notice of violation issued under 312 IAC 25-7 or 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 director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to do either of the following:

(A) Submit to the director 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.

(B) Establish to the director 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 that violation. If the initial judicial review authority under IC 14-34-17 and IC 4-21.5-5, or a federal or state counterpart to IC 14-34-17 or IC 4-21.5-5, affirms the violation, then the applicant shall, within thirty (30) days of the judicial action, submit the proof required under clause (A).

(2) Any permit that is issued on the basis of proof submitted under subdivision (1)(A) that a violation is in the process of being corrected or pending the outcome of an appeal described in subdivision (1)(B) shall be conditionally issued.

(c) If the director 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 violation of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.), no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for a hearing on the determination as provided in IC 4-21.5 and 312 IAC 3.

(d) After October 24, 1992, the following apply:

(1) The prohibitions of subsection (b) regarding the issuance of a new permit shall not apply to any violation that:

(A) occurs after October 24, 1992;

(B) is unabated; and

(C) results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(i) issued before September 30, 2004, or any renewals thereof; and

(ii) held by the person making application for the new permit.

(2) A permit issued under section 105.5 of this rule, an event or condition shall be presumed to be unanticipated for the purposes of this subsection if the event or condition:

(A) arose after permit issuance;

(B) was related to prior mining; and

(C) was not identified in the permit.

(Natural Resources Commission; 312 IAC 25-4-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3488, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2452, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)

312 IAC 25-4-115 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 115. (a) No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates, and the director makes written findings 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 permit application is accurate and complete and in compliance with all requirements of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article.

(2) The applicant has demonstrated that reclamation, as required by IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article, can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is shown not within an area:

(A) under study or administrative proceedings under a petition filed under 312 IAC 25-3-6 through 312 IAC 25-3-12 to have an area designated as unsuitable for surface coal mining operations unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments had been made in relation to the operation covered by the permit application; or

(B) designated as unsuitable for mining under 312 IAC 25-3.

(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 director the documentation required under section 19(b) or 60(b) of this rule.

(5) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in sections 47(c) and 85(c) of this rule, has been made by the director, and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(6) The applicant has demonstrated that any existing structure will comply with the applicable performance standards of 312 IAC 25-6-5 through 312 IAC 25-6-148 and section 116 of this rule.

(7) The applicant has paid all reclamation fees required by 312 IAC 25-10 and all reclamation fees from previous and existing operations as required by 30 CFR 870.12.

(8) The applicant has satisfied the applicable requirements of section 98 of this rule with respect to special categories of mining.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long term, intensive agricultural postmining land use, in accordance with the requirements of 312 IAC 25-6-54 or 312 IAC 25-6-115.

(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) The effect has been taken into account of the proposed mining operation on properties or sites eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures. This finding may be supported in part by the inclusion of appropriate permit conditions or changes in the operation plan to protect these properties or sites or by a documented decision that no additional protection measures are necessary. In making this finding, the director shall take into account the following:

(A) The relative importance of the property or site to other properties or sites of a similar nature in Indiana that are listed on or eligible for listing on the National Register of Historic Places or on the Indiana state register of historic sites and structures based upon information available from the division of historic preservation and archeology of the department.

(B) The estimated cost of any treatment or mitigation measures required by the director. The estimate shall be provided by the applicant and shall be prepared by a person qualified as a principal investigator at 312 IAC 21-3-4. The estimate shall be accompanied by the scope of work and any other documents that provide the basis for that estimate. A decision that treatment or mitigation measures are not required shall not be based on cost alone.

(12) For a proposed remining operation where the applicant intends to reclaim under 312 IAC 25-6-53 or 312 IAC 25-6-114, the site of the operation is a previously mined area as defined in 312 IAC 25-1-107.

(13) For permits to be issued under section 105.5 of this rule, the permit application must contain the following:

(A) Lands eligible for remining.

(B) An identification of any potential environmental and safety problems related to prior mining activity that could reasonably be anticipated to occur at the site.

(C) Mitigation plans to sufficiently address potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(b) If the director decides to approve the application, the applicant will submit the performance bond or other equivalent guarantee required under 312 IAC 25-5 prior to the issuance of the permit.

(c) After an application is approved, but before the permit is issued, the director shall reconsider the decision to approve the application based on the compliance review required by section 114(b)(1) of this rule in light of any new information submitted under sections 17 and 18 of this rule. *(Natural Resources Commission; 312 IAC 25-4-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3489, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2453, eff Jan 1, 2005)*

312 IAC 25-4-116 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; existing structures, permit approval or denial

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 116. (a) No application for a permit or revision that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the director finds, in writing, on the basis of information set forth in the complete application under section 41 of this rule that:

(1) the structure meets the performance standards of IC 14-34 and 312 IAC 25-6; and

(2) no significant harm to the environment or public health or safety will result from use of the structure.

(b) If the applicant demonstrates, and the director finds, that immediate compliance with the performance standards of 312 IAC 25-6 for any structure is not practicable, the director shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

(1) the modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of 312 IAC 25-6 as soon as possible, but not later than six (6) months after issuance of the permit;

(2) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(3) the applicant will monitor the structure to determine compliance with the performance standards of 312 IAC 25-6.

(Natural Resources Commission; 312 IAC 25-4-116; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3490, eff Dec 1, 2001)

312 IAC 25-4-117 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial actions

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34-2-2; 30 CFR 773.15; 30 CFR 773.19

Sec. 117. (a) The director shall approve, require modification of, or deny all applications for permits on the basis of the following qualifications:

(1) Complete applications for permits and revisions or renewals thereof.

(2) Public participation as provided for in this article.

(3) Compliance with any applicable provisions of sections 98 through 107 of this rule.

(4) Processing and review of applications as required by sections 108 through 116 of this rule, this section, and sections 119 through 121 of this rule.

(b) The director shall take action, as required under subsection (a), within the following times:

(1) Except as provided for in subdivision (2), a complete application submitted to the director after the time required under section 5(a) of this rule and in accordance with section 5(b) of this rule shall be processed by the director, so that an application is approved or denied within the following terms:

(A) If an informal conference has been held under section 112 of this rule, within sixty (60) days of the close of the conference.

(B) If no informal conference has been held under section 112 of this rule, then within the time frames specified in section 5 of this rule.

(2) Not withstanding any other provision of this section, no time limit under IC 14-34 or this section requiring the director to act shall expire from the time a proceeding is initiated under section 114(c) of this rule until a final agency determination under IC 4-21.5 and IC 14-34-2-2 has been made.

(c) If an informal conference is held under section 112 of this rule, the director shall give written findings to the permit applicant and to each person who is a party to the conference, approving, modifying, or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(d) If no such informal conference has been held, the director shall give its written findings to the permit applicant, approving, modifying, or denying the application in whole, or in part, and stating the specific reasons in the decision.

(e) Simultaneously, the director shall do the following:

(1) Give a copy of the decision to each person and government official who filed a written objection or comment with respect to the application and the local office of surface mining.

(2) Publish a summary of the decision in a newspaper of general circulation in the general area of the proposed operation.

(f) Within ten (10) days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee that complies with 312 IAC 25-5, the director shall notify the local government officials in the local political subdivision in which the land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area. *(Natural Resources Commission; 312 IAC 25-4-117; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3490, eff Dec 1, 2001)*

312 IAC 25-4-118 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit conditions

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3; IC 14-34-13; IC 14-34-15-1; IC 14-34-15-2; 30 CFR 773.17

Sec. 118. Each permit issued by the director shall be subject to the following conditions:

(1) 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 are subject to the performance bond or other equivalent guarantee in effect under 312 IAC 25-5.

(2) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the director otherwise directs in the permit.

(3) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of IC 14-34, and the requirements of this article.

(4) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow

the authorized representatives of the director and the Secretary of the Interior to:

(A) have the right of entry provided for in IC 14-34-15-1; and

(B) be accompanied by private persons for the purpose of conducting an inspection in accordance with IC 14-34-15-2 when the inspection is in response to an alleged violation reported to the director by a private person.

(5) 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, the following:

(A) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of noncompliance.

(B) Immediate implementation of measures necessary to comply.

(C) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(6) As applicable, the permittee shall comply with the requirements of section 41 of this rule and 312 IAC 25-6-5 through 312 IAC 25-6-132 for compliance, modification, or abandonment of existing structures.

(7) The operator shall pay all reclamation fees required by IC 14-34-13 for coal produced under the permit for sale, transfer, or use in the manner required by 312 IAC 25-10.

(8) Within thirty (30) days after a cessation order is issued under 312 IAC 25-7-5, 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 director the information in clauses (A) and (B), current to the date the cessation order was issued, or notify the director, in writing, that there has been no change since the immediately preceding submittal of such information:

(A) any new information needed to correct or update the information previously submitted to the director by the permittee under sections 17(c) and 58(a)(4) of this rule; or

(B) if not previously submitted, the information required from a permit applicant by sections 17(c) and 58(a)(4) of this rule.

(Natural Resources Commission; 312 IAC 25-4-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3491, eff Dec 1, 2001, except subdivision (4); errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2454, eff Jan 1, 2005)

312 IAC 25-4-119 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit terms

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 773.19

Sec. 119. (a) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted by the director if:

(1) the application is full and complete for the specified longer term and complies with this article; and

(2) the applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(b) A permit shall terminate if the permittee has not commenced the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit. The director may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that an extension is necessary, if:

(1) litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(2) there are conditions beyond the control and without the fault or negligence of the permittee.

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. An extension of time granted by the director under this subsection shall be specifically set forth in the permit, and notice of the extension shall be made to the public.

(c) Permits may be ordered suspended, revoked, or modified by the director in accordance with the following:

(1) Sections 99 through 101, 103, and 122 of this rule.

(2) 312 IAC 25-7-1 through 312 IAC 25-7-4.

(3) 312 IAC 25-7-7.

(4) 312 IAC 25-7-13 through 312 IAC 25-7-21.

(Natural Resources Commission; 312 IAC 25-4-119; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3491, eff Dec 1, 2001)

312 IAC 25-4-120 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; right of entry

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 120. (a) A permit must ensure that the requirements of this section are satisfied.

(b) Except to the extent the director otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application.

(c) The permittee shall allow the director, without advance notice or a search warrant, upon presentation of appropriate credentials and without delay, to do the following:

(1) Have the rights of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation.

(2) Be accompanied by private persons for the purposes of conducting an inspection when the inspection is in response to an alleged violation reported to the director by the private person.

(d) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the permit maps submitted under sections 26 through 56 or 67 through 97 of this rule and approved for the term of the permit and that are subject to the performance bond in effect under 312 IAC 25-5-1 through 312 IAC 25-5-19.

(e) The operator shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by 30 CFR 870. *(Natural Resources Commission; 312 IAC 25-4-120; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3492, eff Dec 1, 2001)*

312 IAC 25-4-121 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; mine maps

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 121. All operations in existence prior to July 29, 1982, that seek approval of a permit under the requirements of IC 14-34 shall be required to submit to the director an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show, as of the effective date of the permanent regulatory program permit, the lands from which coal has not yet been removed and the lands and structures that have been used or disturbed to facilitate mining as of that date. This map shall be submitted to the director within sixty (60) days after the effective date of such permit. *(Natural Resources Commission; 312 IAC 25-4-121; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3492, eff Dec 1, 2001)*

312 IAC 25-4-122 Administrative review of approval or denial of application

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34

Sec. 122. (a) Whenever an application for any permit, revision, or renewal is approved or denied under the provisions of this article or IC 14-34, the applicant or any person with an interest that is or may be adversely affected shall be entitled to a hearing before the commission on such approval or denial upon filing within thirty (30) days after receipt of notice of such approval or denial or within thirty (30) days after publication of the summary of the decision in the newspaper pursuant to section 117(e)(2) of this rule a written request for such hearing. Such hearings and appeals therefrom shall be conducted in accordance with IC 4-21.5.

(b) Appeal from the commission's or director's final determination granting or denying a permit shall be as provided in section 123 of this rule.

(c) Where a hearing is requested under subsection (a), the commission may, under such conditions as it may prescribe, grant appropriate temporary relief pending final determination of the proceedings if:

(1) all parties to the proceedings are notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting temporary relief shows a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

(3) temporary relief will not adversely affect the public health or safety or cause significant imminent environmental harm to

land, air, or water resources; and

(4) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

(Natural Resources Commission; 312 IAC 25-4-122; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3492, eff Dec 1, 2001)

312 IAC 25-4-123 Administrative and judicial review of decisions by the commission on permit applications; judicial review

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34-15-12

Sec. 123. (a) Any action of the director or the commission is subject to judicial review by a court of competent jurisdiction. The court shall comply with IC 4-21.5 in all judicial review proceedings. The availability of judicial review under section 122 of this rule and this section does not limit the operation of rights under IC 14-34-15-12.

(b) The commencement of a judicial review proceeding under section 122 of this rule and this section does not operate as a stay of the action, order, or decision of the director or the commission.

(c) Pending final determinations of the judicial review proceeding, the court may grant temporary relief if:

(1) all parties to the proceedings were notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting the relief shows a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(3) the temporary relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(Natural Resources Commission; 312 IAC 25-4-123; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3493, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-4-124 Administrative and judicial review of improvidently issued permits; general procedures

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34

Sec. 124. (a) If the director has reason to believe that a surface coal mining and reclamation permit was improvidently issued, the director shall review the circumstances under which the permit was issued, using the criteria in subsection (b). If the director finds the permit was improvidently issued, the director shall comply with subsection (c).

(b) The director 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 director 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;

(2) the violation, penalty, or fee:

(A) remains unabated or delinquent; and

(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:

(A) the permittee was linked to the violation, penalty, or fee through ownership or control; or

(B) 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) If the director finds, under subsection (b), that, because of an unabated violation or a delinquent penalty or fee, a permit was improvidently issued, one (1) or more of the following remedial measures shall be used:

(1) Implement, with the cooperation of the permittee or other person responsible, and 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 the permittee or other person responsible to abate the violation in a reasonable period of time or pay the penalty or fee.

(3) Suspend the permit until the violation is abated or the penalty or fee is paid.

(4) Rescind the permit under section 125 of this rule.
(Natural Resources Commission; 312 IAC 25-4-124; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3493, eff Dec 1, 2001)

312 IAC 25-4-125 Administrative and judicial review of decisions by the director on permit applications; judicial review; improvidently issued permits; rescission procedures

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3; IC 14-34

Sec. 125. (a) Where the director, under section 124(c)(4) of this rule, elects to rescind an improvidently issued permit, the director shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the director under section 124(b) of this rule and states that, 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 director finds one (1) of the following:

(1) The finding of the director under section 124(b) of this rule 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.

(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) 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 director.

(c) The permittee may file an appeal for administrative review of the notice under IC 4-21.5-3. *(Natural Resources Commission; 312 IAC 25-4-125; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001)*

312 IAC 25-4-126 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; review

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 126. (a) The director will review each permit issued and outstanding annually during the term of the permit or no less frequent than the middle of the permit term.

(b) After this review, the director may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with IC 14-34 and this article.

(c) Copies of the decision of the director will be sent to the permittee.

(d) Any order of the director requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of sections 122 and 123 of this rule. *(Natural Resources Commission; 312 IAC 25-4-126; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001)*

312 IAC 25-4-127 Permit reviews; revisions, renewals, and transfer, sale, or assignment of rights granted under permits; permit revisions

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 127. (a) A revision to a permit shall be obtained according to the following:

(1) For changes in surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. Changes that constitute a significant departure shall include, but are not limited to, those that could result in the operator's inability to comply with 312 IAC 25-6-1 through 312 IAC 25-6-148 or present a hazard to public health and safety.

(2) When required by an order issued under section 126 of this rule.

(3) In order to continue operation after the cancellation or material reduction of the liability insurance policy, or performance bond upon which the original permit was issued.

(b) The application for revision shall be filed in accordance with the following:

(1) The permittee shall submit the application to the director within the time provided for under section 5(c) of this rule.

(2) Any application for a revision that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under sections 16 through 107 of this rule or in the conditions of the original permit shall, at a minimum, be subject to the requirements of sections 108 through 123 of this rule.

(c) Any extensions to the area covered by a permit, except for incidental boundary revisions under subsection (d), shall be made by application for a new permit and shall not be approved under section 126 of this rule, this section, and sections 128 through 134 of this rule.

(d) Incidental boundary revision criteria consist of the following:

(1) Incidental boundary revisions are those that:

(A) do not constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit as defined in subsection (a)(1);

(B) are required for the orderly and continuous mining and reclamation operation;

(C) adjoin the permit acreage;

(D) would be mined and reclaimed in conformity with the approved permit plans; and

(E) do not exceed ten percent (10%) of the original permit acres or twenty (20) acres, whichever is less.

(2) The aggregate of all incidental boundary revisions for the permit shall not exceed fifteen percent (15%) of the original permit area, provided, however, the aggregate of all incidental boundary revisions that involve coal removal shall not exceed ten percent (10%) of the original permit area. The director may waive the fifteen percent (15%) aggregate limitation if the director finds all other provisions of subdivision (1) are met and the interests of the public will not be adversely affected.

(3) A permittee may obtain an incidental boundary revision by submitting to the director an application that shall contain the following information:

(A) The size of the original permit area, and of the additional area.

(B) The premining and postmining land uses.

(C) A showing that the other requirements of subdivisions (1) and (2) are satisfied.

(D) A map showing the additional area.

(E) Proof of the permittee's legal right to enter and conduct surface coal mining and reclamation operations on the additional area.

(F) Any necessary plans that are not contained in the already approved permit.

(G) A statement indicating whether or not any areas unsuitable for mining as provided in 312 IAC 25-3-1 and 312 IAC 25-3-3 are contained within the proposed additional acreage.

(4) No application for an incidental boundary revision shall be approved unless the applicant demonstrates and the director finds the following:

(A) That reclamation as required by IC 14-34 and this article can be accomplished.

(B) The application complies with all requirements of IC 14-34 and this article.

(C) The pertinent findings required under section 115 of this rule are made.

(5) The director shall approve or deny the incidental boundary revision within thirty (30) days of submittal. The director may extend this thirty (30) day time limitation, where the director finds thirty (30) days is insufficient to adequately review the application and make the findings specified in subdivision (4).

(6) Nothing in this subsection shall be construed to alter the general requirements of IC 14-34 and this article for submittal of fees and bond.

(7) The director may require an applicant for an incidental boundary revision to protect, within the expanded boundaries, any historic or archaeological properties listed or eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures to prevent or minimize adverse impacts through appropriate mitigation and treatment measures.

(Natural Resources Commission; 312 IAC 25-4-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001)

312 IAC 25-4-128 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; permit renewals, general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 128. (a) Any valid, existing permit issued under this program shall carry with it the right of successive renewal upon expiration of the term of the permit in accordance with sections 129 through 131 of this rule. Successive renewal shall be available only for those areas that were specifically approved by the director on the application for the existing permit as within the boundaries of the permit.

(b) Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit except as provided in section 129(b)(2) of this rule. *(Natural Resources Commission; 312 IAC 25-4-128; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001)*

312 IAC 25-4-129 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; completed applications

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 129. (a) Complete applications for renewals of a permit shall be made within the time prescribed by section 5(b) of this rule. Renewal applications shall be in a form and with contents required by the director under this program and in accordance with subsection (b)(2), including, at a minimum, the following:

(1) A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal.

(2) A copy of the newspaper notice and proof of publication of same under section 109(a) of this rule.

(3) Evidence that a liability insurance policy will be provided by the applicant for the proposed period of renewal.

(b) Processing and review of renewals shall satisfy the following:

(1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in sections 109 through 112 of this rule.

(2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit that addresses any new land areas shall be subject to the full standards applicable to new permit applications under:

(A) IC 14-34;
(B) sections 2 through 8 of this rule;
(C) sections 16 through 128 of this rule;
(D) this section;
(E) sections 130 through 143 of this rule;
(F) 312 IAC 25-5; and
(G) the regulatory program.

(3) Before the permit renewal becomes valid, the permittee shall submit to the director any additional performance bond required to comply with 312 IAC 25-5.

(Natural Resources Commission; 312 IAC 25-4-129; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001)

312 IAC 25-4-130 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; terms

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 130. Any permit renewal shall be for a term not to exceed the period of the original permit established under section 119 of this rule. *(Natural Resources Commission; 312 IAC 25-4-130; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001)*

312 IAC 25-4-131 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; approval criteria

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 131. (a) The director shall, upon the basis of a complete application for renewal and completion of all procedures required under sections 129 and 130 of this rule, issue a renewal of a permit unless it is established and written findings by the director are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under IC 14-34 and 312 IAC 25-6;

(3) the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with IC 14-34 and the regulations on existing areas;

(4) the operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the director might require under 312 IAC 25-5; or

(5) any additional revised or updated information required by the director has not been provided by the applicant.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The director shall send copies of the director's decision to the following:

(1) The applicant.

(2) Any persons who filed objections or comments to the renewal.

(3) Any persons who were parties to any informal conference held on the permit renewal.

(d) Any person having an interest that is or may be adversely affected by the decision of the director will have the right to administrative and judicial review set forth in sections 122 and 123 of this rule. *(Natural Resources Commission; 312 IAC 25-4-131; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001)*

312 IAC 25-4-132 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; transfer, assignment or sale of permit rights, general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 132. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this article shall be made without the prior written approval of the director, in accordance with this section and sections 133 through 134 of this rule. *(Natural Resources Commission; 312 IAC 25-4-132; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3497, eff Dec 1, 2001)*

312 IAC 25-4-133 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; approval for transfer, assignment, or sale of permit rights

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 133. (a) Any person seeking to succeed by transfer, assignment, or sale, to the rights granted by a permit shall, before the date of the transfer, assignment, or sale, establish the following:

(1) Obtain the performance bond coverage of the original permittee by accomplishing one (1) of the following:

(A) Receive transfer of the original bond.

(B) Execute a written agreement with the original permittee and any successor in interest that provides:

(i) the bond posted by the original permittee and any successor continues in force on the areas affected by the original permittee and any successor; and

(ii) for any supplemental or additional bond required by the director.

If an agreement is reached under this clause, the director may release any bond posted by the original permittee or a successor that exceeds what is required by the agreement.

(C) Provide sufficient bond to cover the original permit in its entirety from inception to completion of reclamation

operations.

(D) Use another method that provides the reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee.

(2) Provide the director with an application for approval of the proposed transfer, assignment, or sale, including the following:

(A) The name and address of the existing permittee.

(B) The name and address of the person proposing to succeed by the transfer, assignment, or sale and the name and address of that person's resident agent.

(C) For surface mining activities, the same information as is required by sections 17 through 19, 20(c), and 22 through 23 of this rule for applications for new permits for those activities.

(D) For underground mining activities, the same information as is required by sections 58 through 60, 61(c), and 63 through 64 of this rule for applications for new permits for those activities.

(3) Obtain the written approval of the director for transfer, assignment, or sale of rights.

(b) A person applying for approval of the transfer, assignment, or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved. The newspaper advertisement shall indicate the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent. Any person whose interests are or may be adversely affected, including the head of any local, Indiana, or federal government agency, may submit written comments on the application for approval by the director within thirty (30) days of the last date of the public notice.

(c) The director shall not grant approval for a transfer, sale, or assignment of rights under a permit, except, upon a written finding, the following:

(1) The person seeking approval shall conduct the operations covered by the permit in accordance with the following:

(A) The requirements for permits for special categories of mining under sections 98 through 107 of this rule.

(B) The criteria for permit approval or denial under section 115 of this rule.

(C) The criteria for permit approval or denial for existing structures under section 116 of this rule.

(2) The applicant has submitted a performance bond under subsection (a)(1) that is at least equivalent to the bond of the original permittee.

(3) The applicant shall continue to conduct the operations involved in full compliance with the terms and conditions of the original permit unless a new permit is obtained under section 134 of this rule.

(4) A surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of a federal or state statute, rule, or regulation. If this finding cannot be made, the applicant must establish either of the following:

(A) 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.

(B) 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. An appeal taken from an order or determination of the department must conform to IC 14-34. If the initial judicial review authority either denies a stay applied for in the appeal or affirms the violation, the applicant shall promptly submit documentation to establish the requirements of clause (A).

(5) The written findings required under section 115 of this rule.

(d) The director shall notify the permittee, the successor, any person who provides comments under this section, and the Office of Surface Mining of the findings made under subsection (c). *(Natural Resources Commission; 312 IAC 25-4-133; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3497, eff Dec 1, 2001)*

312 IAC 25-4-134 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; succeeding to rights granted under permit; requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 134. (a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee and shall immediately provide notice to the director of the consummation of the transfer, assignment, or sale of permit rights.

(b) Under section 133(c)(3) of this rule, a successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall apply:

(1) for a new permit under sections 2 through 123 of this rule if the change involves conducting operations outside the original permit area; or

(2) for a revised permit under section 127 of this rule.

(Natural Resources Commission; 312 IAC 25-4-134; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3498, eff Dec 1, 2001)

312 IAC 25-4-135 Small operator assistance; objective

Authority: IC 14-34-2-1
Affected: IC 14-34-3-5

Sec. 135. The objective of this section and sections 136 through 143 of this rule is to meet the intent of IC 14-34-3-5 by:

(1) providing financial and other necessary assistance to qualified small operators; and

(2) assuring that the director shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

(Natural Resources Commission; 312 IAC 25-4-135; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3498, eff Dec 1, 2001)

312 IAC 25-4-136 Small operator assistance; definitions

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.3

Sec. 136. The following definitions apply to section 135 of this rule, this section, and sections 137 through 143 of this rule:

(1) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(2) "Probable cumulative impacts" means the expected total:

(A) qualitative and quantitative; or

(B) direct and indirect;

effects of mining and reclamation activities on the hydrologic regime.

(3) "Probable hydrologic consequences" means the projected result of proposed surface coal mining and reclamation operations that may reasonably be expected to change:

(A) the quantity or quality of the surface and ground water;

(B) the surface or ground water flow, timing, and pattern;

(C) the stream channel conditions; and

(D) the aquatic habitat on the permit area and other affected areas.

(4) "Program administrator" means the Indiana or federal official who has the authority and responsibility for overall management of the small operator assistance program.

(5) "Qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified as section 140 of this rule under the small operator assistance program and that meets the standards of section 141 of this rule.

(Natural Resources Commission; 312 IAC 25-4-136; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3498, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-4-137 Small operator assistance; eligibility for assistance

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.6

Sec. 137. An applicant is eligible for assistance if he or she does the following:

(1) Intends to apply for a permit under IC 14-34 and this article.

(2) Establishes that his or her probable total attributed production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed three hundred thousand (300,000) tons. Production from the following operations shall be attributed to the applicant:

(A) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a ten percent (10%) interest.
(B) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than ten percent (10%) of the applicant's operation.
(C) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of ownership, direction of management, or in any other manner.
(D) All coal produced by operations owned by members of the applicant's family and the applicant's relatives unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under IC 14-34 or this article.
(4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the small operator assistance program.

(Natural Resources Commission; 312 IAC 25-4-137; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3499, eff Dec 1, 2001)

312 IAC 25-4-138 Small operator assistance; filing for assistance

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.7

Sec. 138. Each application for assistance shall include the following information:
(1) A statement of the operator's intent to file a permit application.
(2) The names and addresses of the following:
(A) The permit applicant.
(B) The operator if different from the applicant.
(3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under section 137 of this rule. The schedule shall include, for each location, the following:
(A) The operator or company name under which coal is or will be mined.
(B) The permit number and MSHA number.
(C) The actual coal production for the year preceding the year for which the applicant applies for assistance, and production that may be attributed to the applicant under section 137 of this rule.
(D) The estimated coal production and any production that may be attributed to the applicant for each year of the proposed permit.
(4) A description of the following:
(A) The proposed method of coal mining.
(B) The anticipated starting and termination dates of mining operations.
(C) The number of acres of land to be affected by the proposed mining operation.
(D) A general statement on the probable depth and thickness of the coal resource, including a statement of the reserves in the permit area and the method by which they were calculated.
(5) A United States Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail that clearly shows the following:
(A) The area of land to be affected and the natural drainage above and below the affected area.
(B) The names of property owners within the area to be affected and on adjacent lands.
(C) The location of existing structures and developed water sources within the area to be affected and on adjacent lands.
(D) The location of any existing or proposed test borings or core samplings.
(E) The location and extent of known workings of any underground mines.
(6) Copies of documents that show the following:
(A) The applicant has a legal right to enter and commence mining within the permit area.
(B) A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or install necessary instruments.

(Natural Resources Commission; 312 IAC 25-4-138; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3499, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-4-139 Small operator assistance; application approval and notice

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.8

Sec. 139. (a) If the program administrator finds the applicant eligible, the program administrator shall inform the applicant in writing that the application is approved.

(b) If the program administrator finds the applicant ineligible, the program administrator shall inform the applicant, in writing, that the application is denied and shall state the reasons for denial. *(Natural Resources Commission; 312 IAC 25-4-139; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3500, eff Dec 1, 2001)*

312 IAC 25-4-140 Small operator assistance; program services and data requirements

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.9

Sec. 140. (a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in subsection (b) for eligible operators who request assistance. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for the following:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with sections 47 and 85 of this rule, and any other applicable provisions of this article.

(2) The drilling and statement of the results of test borings or core samplings from the proposed permit area, in accordance with sections 30 and 71 of this rule and any other applicable provisions of this article.

(3) The development of cross section maps and plans required by sections 38 and 79 of this rule.

(4) The collection of archaeological and historic information and related plans required by sections 27, 37, 68, and 78 of this rule and any other archaeological and historic information required by the director.

(5) Preblast surveys required by section 42 of this rule.

(6) The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by sections 46 and 70 of this rule, and information and plans for any other environmental values required by the director under IC 14-34 or this article.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(d) Data collected under the small operator assistance program shall be made publicly available in accordance with section 113 of this rule. The program administrator shall develop procedures for interstate coordination and exchange of data. *(Natural Resources Commission; 312 IAC 25-4-140; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3500, eff Dec 1, 2001)*

312 IAC 25-4-141 Small operator assistance; qualified laboratories

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.10

Sec. 141. (a) To be designated a qualified laboratory, a firm shall demonstrate the following:

(1) It is staffed with experienced, professional, or technical personnel in the fields applicable to the work to be performed.

(2) It has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods.

(3) It meets applicable federal or Indiana safety and health requirements.

(4) It has analytical, monitoring, and measuring equipment capable of meeting applicable standards.

(5) It has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of sections 28 through 32, 47, and 69 through 73 of this rule, and any other applicable provisions of this article. Other appropriate

methods or guidelines for data acquisition may be approved by the program administrator.

(6) It has the capability of performing services for either the determination or statement referenced in section 140 of this rule.

(b) Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified. *(Natural Resources Commission; 312 IAC 25-4-141; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3500, eff Dec 1, 2001)*

312 IAC 25-4-142 Small operator assistance; assistance funding

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.11

Sec. 142. (a) Funds specifically authorized for the Small Operator Assistance Program shall be used to provide the services specified in section 140 of this rule and shall not be used to cover administrative expenses.

(b) The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services under this rule. *(Natural Resources Commission; 312 IAC 25-4-142; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001)*

312 IAC 25-4-143 Small operator assistance; applicant liability

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 795.12

Sec. 143. (a) A coal operator who has received assistance under sections 135 through 141 of this rule and this section shall reimburse the director for the cost of the services rendered if any of the following occurs:

(1) The applicant submits false information, fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit.

(2) The program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the three hundred thousand (300,000) ton production limit during the twelve (12) months immediately following the date on which the permit was originally issued. Under this section the applicant and its successor are jointly and severally obligated to reimburse the director.

(4) The applicant does not begin mining within six (6) months after obtaining the permit.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith. *(Natural Resources Commission; 312 IAC 25-4-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001)*

Rule 5. Bonding Liability Insurance

312 IAC 25-5-1 General requirements

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 1. This rule sets forth requirements for bonding and insuring surface coal mining and reclamation operations. *(Natural Resources Commission; 312 IAC 25-5-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001)*

312 IAC 25-5-2 Objectives

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 2. The objective of this rule is to set forth the requirements and responsibilities for filing and maintaining bonds and insurance for surface coal mining and reclamation operations in accordance with IC 14-34. *(Natural Resources Commission; 312 IAC 25-5-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001)*

312 IAC 25-5-3 Responsibilities of department of natural resources
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 3. (a) The department shall prescribe and furnish forms for filing performance bonds under section 6 of this rule.

(b) The department shall prescribe terms and conditions for performance bonds and insurance that meet the requirements of this rule.

(c) The department shall determine the amount of the bond under section 8 of this rule.

(d) The department shall release liability under bonds under section 16 of this rule.

(e) The department shall cause all or part of a bond to be forfeited under section 17 of this rule.

(f) The department shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in section 10(e)(2) of this rule, operating without bond coverage is a violation of a permit. *(Natural Resources Commission; 312 IAC 25-5-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3502, eff Dec 1, 2001)*

312 IAC 25-5-4 Definitions
Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 4. (a) The definitions in this section apply throughout this rule.

(b) "Collateral bond" means an indemnity agreement in a sum certain deposited with the department and executed by the permittee and supported by one (1) or more of the following:

(1) The deposit of cash in one (1) or more accounts, payable only to the Indiana department of natural resources upon demand after the department has determined the need for forfeiture and has notified the permittee of forfeiture action.

(2) Certificates of deposit made payable and assigned to the Indiana department of natural resources. Total deposits of the applicant at the institution certifying the certificate of deposit shall not exceed one hundred thousand dollars ($100,000) or the maximum insurable amount as determined by Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation.

(3) An irrevocable letter of credit of any bank organized or authorized to transact business in Indiana, in accordance with section 12(b)(3) of this rule.

(c) "Surety bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in Indiana. *(Natural Resources Commission; 312 IAC 25-5-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3502, eff Dec 1, 2001)*

312 IAC 25-5-5 Filing bonds; requirements
Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 5. (a) After a surface coal mining and reclamation permit application has been approved, but before such permit is issued, the applicant shall file with the department, on a form prescribed and furnished by the department, a bond or bonds for performance made payable, as appropriate, to "State of Indiana Department of Natural Resources", and conditioned upon the faithful performance of all the requirements of IC 14-34, this article, and the permit.

(b) The bond or bonds shall be filed with the department as follows:

(1) The bond or bonds shall be provided for that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit.

(2) For succeeding increments of surface coal mining and reclamation operations to be initiated and conducted within the permit area, the permittee shall file with the department an additional bond or bonds to cover such increments in accordance with this section. The bond for succeeding increments shall be filed with the department at least thirty (30) days prior to commencing any surface coal mining and reclamation operations on that incremental area.

(3) The operator shall identify the initial and successive areas of increments for bonding on the permit application map or aerial photograph submitted for approval under 312 IAC 25-4-36 or 312 IAC 25-4-77 and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary under section 17 of this rule.

(c) Performance bonds for surface disturbances of underground operations and other long term operations may be bonded for a period not less than the permit term; however, continuous bond coverage must be maintained during active operations and the applicable liability period, and the bond shall be conditioned to extend, replace, or pay the full amount of the bond one hundred twenty (120) days prior to the expiration of any bond term.

(d) An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels, or operations prior to acceptance by the director of the required performance bond.

(e) The applicant shall file, with the approval of the director, a bond or bonds under one (1) of the following schemes to cover the bond amounts for the permit area as determined in accordance with section 8 of this rule:

(1) A performance bond or bonds for the entire permit area.

(2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed.

(3) An incremental bond schedule and the performance bond required for the first increment in the schedule.

(Natural Resources Commission; 312 IAC 25-5-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3502, eff Dec 1, 2001)

312 IAC 25-5-6 Performance bonds; form

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 6. (a) The form of the performance bond shall be approved by the director. The director may allow for any of the following:

(1) A surety bond.

(2) A collateral bond.

(3) An escrow account bond.

(4) Combined surety/escrow bonding.

(5) A combination of any of the bonding methods in subdivisions (1) through (4).

(b) Where the mining operation is owned by two (2) or more persons or entities, the director may allow each person to provide separate financial assurance provided that the total of such assurance is sufficient to accomplish reclamation.

(c) A blanket bond covering statewide or county wide operations may be furnished if the terms and conditions thereof are sufficient to comply with this rule and if approved by the director. *(Natural Resources Commission; 312 IAC 25-5-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3503, eff Dec 1, 2001)*

312 IAC 25-5-7 Period of liability

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 7. (a) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in 312 IAC 25-6-59 through 312 IAC 25-6-61, 312 IAC 25-6-120, and 312 IAC 25-6-122, except, with the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 8 and 9 of this rule. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) The period of liability shall commence after the last year of augmented seeding, fertilizing, irrigation, or other work and shall continue for not less than five (5) years. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release, except as provided in 312 IAC 25-6-59. On lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, the liability period is two (2) years. To the extent that success standards are established by 312 IAC 25-6-59(c)(1) or 312 IAC 25-6-120(c)(1), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the department. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such portion:

(1) is not significant in extent in relation to the entire area under the bond; and

(2) is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) If the department approves a long term intensive agricultural postmining land use, in accordance with 312 IAC 25-6-64 or 312 IAC 25-6-128, the applicable five (5) year or ten (10) year period of liability shall commence at the date of initial planting.

(e) The bond liability of the permittee shall include only those actions that the operator is obliged to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 312 IAC 25-6-64 or 312 IAC 25-6-128. *(Natural Resources Commission; 312 IAC 25-5-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3503, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff Jan 1, 2005)*

312 IAC 25-5-8 Bond amount; determination

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 8. (a) The director shall approve a bond rate per acre based on the probable difficulty of reclamation due to, but not limited to, factors such as the following:

(1) Prime farmland requirements.
(2) Postmining land uses.
(3) Depth of overburden.
(4) Topsoil handling requirements.
(5) Use of alternate topsoil materials.
(6) Topography.
(7) Potential toxic producing materials.
(8) Excess spoil.
(9) Surface and ground water requirements.
(10) Nature of overburden.
(11) Revegetation requirements.
(12) Remining of previously disturbed areas.
(13) Refuse disposal considerations.

(b) The minimum amount of bond for a surface or underground coal mining and reclamation operation shall be ten thousand dollars ($10,000) for the entire area under permit.

(c) The bond per acre shall be no more than ten thousand dollars ($10,000) per acre nor less than three thousand dollars ($3,000) per acre. *(Natural Resources Commission; 312 IAC 25-5-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3504, eff Dec 1, 2001)*

312 IAC 25-5-9 Adjustment of amount

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 9. (a) The amount of bond or deposit required and the terms of each acceptance of the applicant's bonds shall be adjusted by the director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes. The director shall notify the permittee, the surety, and any other person with a property interest in collateral of any proposed bond adjustment, and provide the permittee an opportunity for an informal conference on the adjustment. Bond adjustments are not subject to procedures of bond release under section 16 of this rule.

(b) A permittee may request reduction of the amount of performance bond upon submission of evidence to the director proving that the permittee's method of operation or other circumstances will reduce the estimated cost to the director to reclaim the area bonded. This reduction of bond shall be deemed a bond adjustment.

(c) In the event that an approved operations and reclamation plan is modified in accordance with this rule, the director will review the bond for adequacy and, if necessary, will adjust the bond to conform to the operations and reclamation plan as modified. *(Natural Resources Commission; 312 IAC 25-5-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3504, eff Dec 1, 2001)*

312 IAC 25-5-10 General terms and conditions of bond

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 10. (a) The performance bond shall be in an amount determined by the director as provided in section 8 of this rule.

(b) The performance bond shall be payable to "State of Indiana Department of Natural Resources".

(c) The performance bond shall be conditioned upon faithful performance of all of the requirements of IC 14-34, this article, the director, and the conditions of the permit.

(d) The duration of the bond shall be for the time period provided in section 7 of this rule.

(e) Reporting requirements for the bond shall be as follows:

(1) The bond shall provide for a mechanism for a bank or surety company to give prompt notice to the director and the permittee of any action filed alleging:

(A) the insolvency or bankruptcy of the surety company or the bank; or

(B) any violations that would result in suspension or revocation of the surety's charter or bank's charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of:

(A) bankruptcy;

(B) insolvency or suspension; or

(C) revocation of its charter or license;

the permittee shall be deemed to be without bond coverage. The director shall issue a notice of violation to any operator who is without bond coverage and shall specify a reasonable period to replace bond coverage not to exceed ninety (90) days. During this period the director will conduct weekly inspections to ensure continuing compliance with the permit, this article, and IC 14-34. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 312 IAC 25-7-7 and need not be reported as a past violation in permit applications under 312 IAC 25-4-18 and 312 IAC 25-4-59. If such notice of violation is not abated in accordance with the schedule, a cessation order shall be issued. *(Natural Resources Commission; 312 IAC 25-5-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3504, eff Dec 1, 2001)*

312 IAC 25-5-11 Surety bonds; types and conditions

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 11. (a) The bond shall be executed by the operator and a corporate surety licensed to do business in Indiana. Surety bond coverage for permitted lands not disturbed may be canceled with the consent of the director.

(b) Surety bonds shall be noncancelable during their term. *(Natural Resources Commission; 312 IAC 25-5-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3505, eff Dec 1, 2001)*

312 IAC 25-5-12 Collateral bonds

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 800.21

Sec. 12. (a) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(1) The director shall obtain possession of and keep in custody all collateral deposited by the applicant until authorized for release or replacement as provided in this rule.

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

(3) The director shall require that certificates of deposit be assigned to the state, in writing, and upon the books of the bank issuing such certificates.

(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 Indiana.

(2) The letter must be irrevocable prior to a release by the director.

(3) The letter must be payable to "State of Indiana, Department of Natural Resources" in part or in full upon demand by and receipt from the director of a notice of forfeiture issued in accordance with section 17 of this rule.

(4) The letter must contain terms that authorize the director to draw upon the letter, in full, to obtain cash collateral in the event that the permittee has failed to furnish, to the director, a replacement bond consistent with this rule at least thirty (30) days prior to the expiration of the letter, and that such drafts need not be accompanied by a notice of forfeiture in accordance with section 17(d) of this rule.

(5) The total amount of letters of credit that will be accepted from any bank for any permittee, on all permits held by that permittee, shall not exceed the bank's maximum legal lending limit as required by the appropriate Indiana or federal banking regulatory agency.

(6) The letter of credit shall provide that:

(A) the bank shall give prompt notice to the permittee and the director of any notice received or action filed alleging:

(i) the insolvency or bankruptcy of the bank; or

(ii) any violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business;

(B) in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the director; and

(C) upon the incapacity of a bank by reason of:

(i) bankruptcy;

(ii) insolvency or suspension; or

(iii) revocation of its charter or license;

the permittee shall be deemed to be without performance bond coverage in violation of section 5(b) of this rule.

(c) Persons with an interest in collateral posted as bond, and who desire notification of actions pursuant to the bond, shall request the notification, in writing, to the director at the time the collateral is offered. *(Natural Resources Commission; 312 IAC 25-5-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3505, eff Dec 1, 2001)*

312 IAC 25-5-13 Escrow bonding

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 13. (a) The director may authorize the permittee to supplement the bond through the establishment of an escrow account deposited in one (1) or more accounts payable on demand only to the state or deposited with the director directly. The total bond, including the escrow amount, shall not be less than the amount required under the terms of performance bonds, including any adjustments, less amounts released in accordance with release of performance bonds.

(b) Interest paid on an escrow account shall be retained in the escrow account and applied to the bond value of the escrow account unless the director has approved that the interest be paid to the permittee. *(Natural Resources Commission; 312 IAC 25-5-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3505, eff Dec 1, 2001)*

312 IAC 25-5-14 Surety/escrow bonding combined

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 14. The director may accept a combined surety/escrow bonding schedule provided the following:

(1) A surety bond payable to the state is posted in the amount determined under section 8 of this rule for reclamation of each successive increment.

(2) An interest-bearing escrow account payable to the state with a predetermined deposit amount and frequency is established.

(3) The amount of the surety bond shall always be sufficient to cover the difference between the escrow balance and the total reclamation cost.

(4) The terms and conditions of the escrow account shall be developed jointly by the permittee, surety, and director. Deposits to the escrow account by the permittee shall be made periodically and so reported to the director. Failure to make deposits on schedule shall be just cause for action by the director.

(5) A certified escrow account balance statement shall be provided periodically to the surety and the director.

(Natural Resources Commission; 312 IAC 25-5-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001)

312 IAC 25-5-15 Bond replacement

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 15. (a) The director may allow permittees to replace existing bonds with other bonds if the liability that has accrued against the permittee on the permit area is transferred to such replacement bonds.

(b) The director shall not release existing performance bonds until the permittee has submitted and the director has approved acceptable replacement performance bonds. A replacement of performance bonds under this section shall not constitute a release of bond under section 16 of this rule. *(Natural Resources Commission; 312 IAC 25-5-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001)*

312 IAC 25-5-16 Performance bond release; requirements Version a

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3-27; IC 14-34-10-2; 30 CFR 800.40

NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 16. (a) A permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within thirty (30) days after an application for bond or deposit release is 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 must be part of any bond release application and shall include the following:

(1) The precise location of the land affected.
(2) The number of acres.
(3) The permittee's name.
(4) The permit number and the date approved.
(5) The amount of the bond filed and the portion sought to be released.
(6) The type and appropriate dates of reclamation work performed.
(7) A description of the results achieved relative to the operator's approved reclamation plan.

The advertisement shall also state that any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, Indiana, or local governmental agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operations, may file written comments or objections or may request a public hearing or informal conference concerning the proposed release from bond with the department within thirty (30) days after the last publication of notice. The notice shall contain the address of the division for submission of comment and the calendar date for the close of the comment period. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, providing notification of the request to seek release from the bond.

(b) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

(c) Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things:

(1) the degree of difficulty to complete any remaining reclamation;
(2) whether pollution of surface and subsurface water is occurring;
(3) the probability pollution will continue; and
(4) the estimated cost of abating the pollution.

The surface owner, agent, or lessee shall be given notice of the inspection by the director and may participate with the department in the inspection. The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the request if no public hearing is held

under subsection (g). If a public hearing is held under subsection (g), an administrative law judge shall enter an order under IC 4-21.5-3-27 within thirty (30) days after the hearing is completed.

(d) The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

(1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.

(2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to the streamflow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.

(3) Phase III. The department may release the remaining bond only after:

(A) the operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this article, or the permit; and

(B) the expiration of the period specified for operator responsibility in IC 14-34-10-2.

(e) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(f) If an application is made for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

(g) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release with the department within thirty (30) days after the last publication of the notice under subsection (a). If written objections are filed, and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty (30) days of the request for such hearing (or, at the option of the person filing the hearing request, in Indianapolis or Jasonville). The date, time, and location of the hearing shall also be advertised by the department in a newspaper of general circulation in the locality of the mine for two (2) consecutive weeks.

(h) The department may set a dispute under this section for an informal conference. Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of a permittee, a person who files objections, the department, or another interested person.

(i) For the purpose of such hearing, the department shall have the authority to:

(1) administer oaths;

(2) subpoena witnesses or written or printed materials;

(3) compel the attendance of witnesses or production of the materials; and

(4) take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity.

A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or by order of the department. *(Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)*

312 IAC 25-5-16 Performance bond release; requirements Version b

Authority: IC 14-10-2-4; IC 14-34-2-1; IC 14-34-6-11

Affected: IC 4-21.5-3; IC 14-34-10-2; 30 CFR 800.40

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 16. (a) A permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within thirty (30) days after an application for bond or deposit release is 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 must be part of any bond release application and shall include the following:

(1) The precise location of the land affected.

(2) The number of acres.

(3) The permittee's name.

(4) The permit number and the date approved.

(5) The amount of the bond filed and the portion sought to be released.

(6) The type and appropriate dates of reclamation work performed.

(7) A description of the results achieved relative to the operator's approved reclamation plan.

The advertisement shall also state that any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, Indiana, or local governmental agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operations, may file written comments or objections or may request a public hearing concerning the proposed release from bond with the department within thirty (30) days after the last publication of notice. The notice shall contain the address of the division for submission of comment and the calendar date for the close of the comment period. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, providing notification of the request to seek release from the bond.

(b) The director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section.

(c) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

(d) Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things, the following:

(1) The degree of difficulty to complete any remaining reclamation.

(2) Whether pollution of surface and subsurface water is occurring.

(3) The probability pollution will continue.

(4) The estimated cost of abating the pollution.

The surface owner, agent, or lessee shall be given notice of the inspection by the director and may participate with the department in the inspection. The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the request if no public hearing or informal conference is held under subsection (i) or (j) or if an informal conference is held under subsection (i) or public hearing is held under subsection (j) within thirty (30) days after the informal conference or public hearing is completed.

(e) The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

(1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.

(2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to the stream flow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.

(3) Phase III. The department may release the remaining bond only after the:

(A) operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this

article, or the permit; and

(B) expiration of the period specified for operator responsibility in IC 14-34-10-2.

(f) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing:

(1) stating the reasons for disapproval; and

(2) recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(g) If an application is made for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

(h) A determination by the director under the provisions of this article or IC 14-34 is subject to review. An affected person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding.

(i) Upon receipt of written objection or a request for public hearing under subsection (a), the department, at the discretion of the director, may set a dispute under this section for an informal conference to resolve the objection. Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of any of the following:

(1) A permittee.

(2) A person who files objections.

(3) The department.

(4) Another interested person.

(j) If objections filed under subsection (a) are not resolved through an informal conference, the department shall hold a public hearing within a reasonable time following the receipt of the request. The public hearing shall be conducted as follows:

(1) The date, time, and location of the public hearing shall be sent to the permittee and other parties to the hearing and advertised by the department in a newspaper of general circulation in the county where the surface coal mining and reclamation operation proposed for bond release is located one (1) time each week for two (2) consecutive weeks.

(2) The requirements of IC 4-21.5-3 shall not apply to the conduct of the public hearing. The public hearing shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the public hearing. An electronic or stenographic record shall be made unless waived by all parties. The record shall be maintained and shall be accessible to the parties of the public hearing until final release of the applicant's performance bond or other equivalent guarantee under this article.

(3) The department shall furnish all parties of the public hearing with the following:

(A) The written findings of the director based on the public hearing.

(B) The reasons for the finding.

(4) If all parties requesting the public hearing withdraw their request before the conference is held, the public hearing may be canceled.

(Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site)

312 IAC 25-5-17 Forfeiture of bonds

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 17. (a) The director shall forfeit all or part of a bond for any permit area or an increment of a permit area if reclamation operations are not conducted in accordance with the reclamation plan or the operator defaults on the conditions under which the bond was posted.

(b) The director may withhold forfeiture if the permittee and surety, if any, agree to a compliance schedule to comply with the violations of the permit or bond conditions.

(c) The director may allow the surety to complete the reclamation plan if the surety can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the alternative postmining land use approved by the director.

No bond shall be released, except for partial releases authorized under section 16 of this rule, until successful completion of all reclamation under the terms of the permit, including applicable liability periods of section 7 of this rule.

(d) In the event a determination to forfeit bond is made, the department shall do the following:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, of the director's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited.

(2) Advise the permittee and surety of their rights to appeal the final determination in accordance with IC 4-21.5.

(3) Proceed in an action for collection of the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, for the amount forfeited, if an appeal is not filed within a time established by the director and a stay of collection issued by the hearing officer or such appeal is unsuccessful.

(4) If an appeal is filed, defend the action.

(e) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the director.

(f) Upon default, the director may forfeit any and all bonds deposited to complete those reclamation operations for which the bonds were posted.

(g) The director shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area on which bond coverage applies and to cover associated administrative expenses. *(Natural Resources Commission; 312 IAC 25-5-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3508, eff Dec 1, 2001)*

312 IAC 25-5-18 Determination of forfeiture amount

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 18. The department shall forfeit the amount of the bond for which liability is outstanding and deposit the proceeds thereof in a dedicated account for use in the payment of all costs associated with the conduct of reclamation activities by the department. Funds forfeited and not used to contract for completion of reclamation work, as indicated in this section, shall be returned by the department to the appropriate entity after reclamation operations have been completed. *(Natural Resources Commission; 312 IAC 25-5-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3508, eff Dec 1, 2001)*

312 IAC 25-5-19 Liability insurance; terms and conditions

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 19. (a) The department shall require the applicant to submit at the time of permit application a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certificate shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of Indiana law. Minimum insurance coverage for bodily injury shall be three hundred thousand dollars ($300,000) for each occurrence and five hundred thousand dollars ($500,000) aggregate; and minimum insurance coverage for property damage shall be two hundred fifty thousand dollars ($250,000) for each occurrence and five hundred thousand dollars ($500,000) aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations under this article.

(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.

(d) The department may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it is self-insured in whole or in part. *(Natural Resources Commission; 312 IAC 25-5-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3508, eff Dec 1, 2001)*

Rule 6. Performance Standards

312 IAC 25-6-1 Coal exploration; applicability
Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 1. Each person who conducts coal exploration activities for the purpose of determining the location, quantity, or quality of a coal seam shall comply with this section and sections 2 through 4 of this rule. *(Natural Resources Commission; 312 IAC 25-6-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3509, eff Dec 1, 2001)*

312 IAC 25-6-2 Coal exploration; required documents
Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 2. Each person who conducts coal exploration operations under section 1 of this rule, this section, sections 3 and 4 of this rule, 312 IAC 25-4-10(b), and 312 IAC 25-4-11 shall, while in the exploration area, possess written approval of the director for the activities. The written approval shall be available for review by the authorized representative of the director upon request. *(Natural Resources Commission; 312 IAC 25-6-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3509, eff Dec 1, 2001)*

312 IAC 25-6-3 Coal exploration; performance standards
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 3. (a) The performance standards in this section are applicable to all coal exploration activities conducted for the purpose of determining the location, quantity, or quality of a coal seam that coal exploration activities substantially disturb the natural land surface as defined at 312 IAC 25-1-142.

(b) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration.

(c) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result. All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of sections 65(b) through 65(f), 67, and 68 of this rule.

(d) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure revegetation or as required by the director.

(f) Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or that person's agent, and shall be accomplished in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. All revegetation shall be in compliance with the plan approved by the director as follows:

(1) All disturbed land shall be seeded or planted to the same seasonal variety native to the disturbed area. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this section.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(g) Small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities shall be diverted in a manner that:

(1) prevents erosion;

(2) to the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or run-off outside the exploration area; and

(3) complies with all other applicable state or federal requirements.

All other drainage shall be diverted as provided in sections 14 and 15 of this rule.

(h) All facilities and equipment shall be removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the director determines may remain to:

(1) provide environmental quality data;

(2) reduce or control the on-site and off-site effects of the exploration activities; or

(3) facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

(i) All coal exploration shall be conducted in a manner that minimizes disturbance of the prevailing hydrologic balance in accordance with sections 12 through 26 of this rule. The director may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Toxic-forming or acid-forming materials shall be handled and disposed of in accordance with sections 19, 21, 22, and 50 of this rule. The director may specify additional measures that shall be adopted by the person engaged in coal exploration.

(k) All exploration holes, wells, or other exposed openings created during exploration shall meet the requirements of sections 8 through 10 of this rule. *(Natural Resources Commission; 312 IAC 25-6-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3509, eff Dec 1, 2001)*

312 IAC 25-6-4 Coal exploration; permit requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 4. (a) Any person who extracts coal for commercial use or sale during coal exploration operations must first obtain a permit for those operations from the director under 312 IAC 25-4-1 through 312 IAC 25-4-134.

(b) With the prior written approval of the director, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the director. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain each of the following:

(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to or commercially used directly by the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include each of the following:

(A) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing.

(B) The amount of coal necessary for the test and why a lesser amount is not sufficient.

(C) A description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified in this subsection, to demonstrate that the amount of coal to be removed is not the total reserve but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

(Natural Resources Commission; 312 IAC 25-6-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3510, eff Dec 1, 2001)

312 IAC 25-6-5 Surface mining; applicability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 5. This section and sections 6 through 69 of this rule apply to all surface mining activities conducted under IC 14-34. *(Natural Resources Commission; 312 IAC 25-6-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3510, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-6-6 Surface mining; signs and markers

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 6. (a) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained for the duration of all operations to which they pertain.

(b) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification number of the current mining and reclamation permit or other authorization to operate. Such signs shall not be removed until after release of all bonds.

(c) The perimeter of the permit area shall be clearly marked before the beginning of surface mining activities.

(d) If blasting is conducted incident to surface mining activities, the permittee shall do the following:

(1) Conspicuously display signs reading "Blasting Area" along the edge of any blasting area 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.

(2) Conspicuously flag the immediate vicinity of charged holes.

(3) Place at all entrances to the permit area from public roads conspicuous signs that state "Warning Explosives in Use", that:

(A) clearly explain the blast warning and all clear signals that are in use; and

(B) explain the marking of blasting areas and charged holes within the permit area.

(e) Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under section 11 of this rule, the stockpiled material shall be clearly marked. However, the permittee may remove the markers while reworking or removing the stockpiles.

(f) Buffer zones shall be marked along their boundaries as required under section 28 of this rule. *(Natural Resources Commission; 312 IAC 25-6-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3510, eff Dec 1, 2001)*

312 IAC 25-6-7 Surface mining; coal recovery

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 7. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized. *(Natural Resources Commission; 312 IAC 25-6-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001)*

312 IAC 25-6-8 Surface mining; casing and sealing drilled holes; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 8. (a) Each drilled hole, shaft, well, or other exposed underground opening shall be cased, sealed, or managed to prevent acid or toxic water drainage from entering ground or surface waters and to minimize disturbance to the prevailing hydrologic balance. Each hole extending below or beyond the stratum immediately below the lowermost coal seam to be mined by the surface methods, within the permit area, shall be sealed in a manner to prevent exposure by mining activity.

(b) Use of a drilled hole, shaft, or other underground opening as a water well must meet the provisions of section 24 of this rule.

(c) This section does not apply to holes solely drilled and used for blasting. *(Natural Resources Commission; 312 IAC 25-6-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001)*

312 IAC 25-6-9 Surface mining; casing and sealing drilled holes; temporary

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 9. Each drilled hole, well, or other exposed underground opening identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, fences, or other protective devices. *(Natural Resources Commission; 312 IAC 25-6-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001)*

312 IAC 25-6-10 Surface mining; casing and sealing drilled holes; permanent

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 10. Each drilled hole, shaft, well, or other exposed underground opening when no longer in use for exploration, monitoring, or other mine uses or unless approved for transfer as a water well under section 24 of this rule, shall be cased, sealed, or otherwise managed to prevent acid or other toxic drainage from entering ground and surface waters. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery. *(Natural Resources Commission; 312 IAC 25-6-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001)*

312 IAC 25-6-11 Surface mining; topsoil and subsoil

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 11. (a) All topsoil shall be removed as a separate layer from the area to be disturbed and segregated. Additional topsoil requirements are as follows:

(1) Where the topsoil is of insufficient quantity or of poor quality to sustain vegetation, the material approved by the director as a topsoil substitute or supplement in accordance with subsection (c) shall be removed separately from the area to be disturbed and segregated.

(2) If the topsoil is less than six (6) inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil to a total depth of six (6) inches and treat the mixture as topsoil.

(3) Topsoil need not be removed:

(A) at sites disturbed only by power poles, signs, fence posts, electrical substations, transformers and switchboxes, explosives magazines, temporary buildings on skids, topsoil stockpiles, culvert installations, cable routes, cable storage areas, powerline cable suspension towers or "horses", pumps, pump hoses, and pipelines; and

(B) with the director's approval, for minor disturbances that will not permanently destroy the existing vegetation and will not cause erosion.

(b) All material to be removed under this rule shall be removed after the vegetative cover that would interfere with its removal and use is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other disturbance, except those disturbances described in subsection (a)(3), takes place.

(c) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the director in the permit application that the resulting soil medium is equal to or more suitable for sustaining vegetation than the existing topsoil.

(d) Storage requirements are as follows:

(1) Materials removed under subsections (a) and (f) shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas within the permit area.

(2) Stockpiled materials shall:

(A) be selectively placed on stable sites within the permit area or within other bonded permit areas of the same permittee within the same mining operation;

(B) be protected from contamination and unnecessary compaction that would interfere with revegetation;

(C) be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing nonnoxious vegetative cover, or through other measures approved by the director in the permit application; and

(D) not be moved until required for redistribution unless approved by the director in the permit application.

(3) Where long term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under subsection (a) would be detrimental to the quality or quantity of those materials, the director may, in the permit application, approve the temporary distribution of the soil materials removed on an approved site within the permit area or another permit area of the same permittee within the same mining operation to enhance the current use of that site until needed for later reclamation, provided that:

(A) such action will not permanently diminish the capability of the topsoil of the host site; and

(B) the material will be retained in a condition more suitable for redistribution than if stockpiled.

(e) Redistribution requirements are as follows:

(1) Topsoil materials removed under subsection (a) shall be redistributed in a manner that:

(A) achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface water drainage systems;

(B) prevents excess compaction of the materials; and

(C) protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the materials removed under subsections (a) and (f), the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) Redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads shall not be required if the permittee demonstrates that:

(A) placement of such materials on the embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(B) the embankments will be otherwise stable against erosion.

(4) Nutrients and soil amendments shall be applied, in amounts determined by soil tests using standard agronomic laboratory procedures, to the initially redistributed material when necessary to establish vegetative cover.

(f) The director may require that portions of the subsoil be removed and segregated, stockpiled and redistributed as subsoil in accordance with the requirements of subsections (d) and (e) if he finds such subsoil layers are necessary to comply with the revegetation requirements of this rule. *(Natural Resources Commission; 312 IAC 25-6-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3512, eff Dec 1, 2001)*

312 IAC 25-6-12 Hydrologic balance; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12. (a) Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, in order to prevent long term adverse changes in that balance which could result from those activities.

(b) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(c) In no case shall federal and Indiana water quality statutes, regulations, rules, standards, or effluent limitations be violated.

(d) Operations shall be conducted to minimize water pollution. If necessary, treatment methods shall be used to control water pollution.

(e) Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(f) Acceptable practices to control and minimize water pollution include the following:

(1) Stabilizing disturbed areas through land shaping.

(2) Diverting run-off.

(3) Achieving quickly germinating and growing stands of temporary vegetation.

(4) Regulating channel velocity of water.

(5) Lining drainage channels with rock or vegetation.

(6) Mulching.

(7) Selectively placing and sealing acid-forming and toxic-forming materials.

(8) Selectively placing waste materials in backfill areas.

(g) If the practices listed in subsection (f) are not adequate to meet the requirements of sections 5 through 11 of this rule, this section, and sections 13 through 68 of this rule, the person who conducts surface mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under sections 5 through 11 of this rule, this section, and sections 13 through 68 of this rule. *(Natural Resources Commission; 312 IAC 25-6-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3513, eff Dec 1, 2001)*

312 IAC 25-6-12.5 Hydrologic balance; application of ground water quality standards at surface coal mining and reclamation operations permitted under IC 14-34 on which coal extraction, including augering, coal processing, coal processing waste disposal, or spoil deposition, occurs after the effective date of this section, or on which disposal activity subject to IC 13-19-3-3 has occurred and the area is not fully released from the performance bond required by IC 14-34-6

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12.5. (a) Ground water is classified under 327 IAC 2-11 to determine appropriate criteria that shall be applied to ground water.

(b) Surface coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2-11.

(c) Surface coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25-4-33 and 312 IAC 25-6-25 govern water replacement.

(d) The ground water management zone described in 327 IAC 2-11-9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal extraction area.

(B) A coal mine processing waste disposal site if not within a coal extraction area.

(C) An area where coal is extracted by auger mining methods.

(D) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site unless the location is within the coal extraction area.

(E) A spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

(Natural Resources Commission; 312 IAC 25-6-12.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3864, eff Feb 1, 2004)

312 IAC 25-6-13 Surface mining; hydrologic balance; water quality standards and effluent limitations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 13. (a) All surface drainage from the disturbed area shall be controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in section 16 of this rule before leaving the permit area.

(b) Siltation structures and other approved alternate techniques as provided in section 16(b) of this rule shall be operated and maintained to achieve applicable federal and state effluent limitations.

(c) For the purposes of this section only, "disturbed area" shall not include those areas in which only diversion ditches, siltation structures, or roads are installed in accordance with sections 5 through 12 of this rule, this section, and sections 14 through 68 of this rule.

(d) Siltation structures required by this section shall be constructed in accordance with section 17 of this rule in appropriate locations before beginning any surface mining activities in the drainage area to be affected.

(e) Discharges of water from areas disturbed by surface mining activities shall be made in compliance with each of the following:

(1) All applicable state and federal water quality laws and regulations.

(2) Effluent limitations for coal mining promulgated by the federal United States Environmental Protection Agency set forth in 40 CFR 434.

(Natural Resources Commission; 312 IAC 25-6-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3513, eff Dec 1, 2001)

312 IAC 25-6-14 Hydrologic balance; diversion; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 14. (a) Flow may be diverted around disturbed areas through temporary or permanent diversions if approved by the director for:

(1) mined areas abandoned before May 3, 1978;

(2) reclaimed areas that meet the criteria of section 17(e) of this rule for siltation structure removal;

(3) undisturbed areas; or

(4) active surface coal mining operations after passing through a siltation structure and meeting the applicable effluent limitations.

(b) Diversions shall be designed to:

(1) minimize adverse impacts to the hydrologic balance within the permit and adjacent areas;

(2) prevent material damage to public or private property; and

(3) assure the safety of the public.

(c) Diversions shall not be used to divert water into underground mines without the approval of the director under section 26 of this rule.

(d) A diversion and its appurtenant structures shall be designed, located, constructed, maintained, and used to:

(1) be stable;

(2) provide protection against flooding and resultant damage to life and property;

(3) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(4) comply with all applicable local, state, and federal laws and regulations.

(e) A temporary diversion shall be removed promptly when no longer needed to achieve the purpose for which the temporary diversion was authorized. The land disturbed by the removal process shall be restored in accordance with the approved reclamation plan and sections 5 through 13 of this rule, this section, and sections 15 through 69 of this rule.

(f) Before any diversion is removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement does not relieve the permittee from maintaining water treatment facilities as otherwise required.

(g) A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed to restore or approximate the premining characteristics of the original stream channel, including the natural riparian

vegetation, to promote the recovery and the enhancement of the aquatic habitat.

(h) Consideration during design shall be given to:

(1) the anticipated flow velocity;

(2) the erosion characteristics of the channel and side slopes;

(3) the need for adequate freeboard above the design water surface elevation; and

(4) the need for channel lining or energy dissipaters.

(Natural Resources Commission; 312 IAC 25-6-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3513, eff Dec 1, 2001)

312 IAC 25-6-15 Hydrologic balance; diversions of perennial streams, intermittent streams, miscellaneous flows; supplemental requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 15. (a) This section provides requirements that are supplemental to those contained in section 14 of this rule for the following:

(1) Diversions of perennial streams.

(2) Intermittent streams with a watershed greater than one (1) square mile.

(3) Miscellaneous flows.

Subsection (b) governs perennial streams and intermittent streams with a watershed greater than one (1) square mile. Subsection (c) governs miscellaneous flows.

(b) Requirements for temporary and permanent diversions are as follows:

(1) Diversion of perennial streams and intermittent streams with watershed greater than one (1) square mile may be approved by the director after making a finding related to stream buffer zones that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of section 14(d)(2) of this rule shall be met when the temporary and permanent diversions for intermittent streams having a watershed greater than one (1) square mile and perennial streams are designed so that the combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a ten (10) year, six (6) hour precipitation event for a temporary diversion and a one hundred (100) year, six (6) hour precipitation event for a permanent diversion.

(4) All stream channel diversion subject to this subsection shall be designed under the supervision of a qualified registered professional engineer in accordance with good engineering practices and the requirements of this section and shall be certified after construction by the qualified registered professional engineer as having been constructed in accordance with the approved plans.

(c) Requirements for miscellaneous flows are as follows:

(1) Miscellaneous flows that consist of all flows except those specified in subsection (b) may be diverted around disturbed areas if required and approved by the director. Miscellaneous flows include ground water discharges, overland flow, ephemeral streams, and intermittent streams having a watershed not greater than one (1) square mile.

(2) The design, location, construction, maintenance, and removal of diversion of miscellaneous flows shall meet all the performance standards set forth in section 14 of this rule.

(3) The requirements of section 14(d)(2) of this rule shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that a combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a two (2) year, six (6) hour precipitation event for a temporary diversion and a ten (10) year, six (6) hour precipitation event for a permanent diversion.

(Natural Resources Commission; 312 IAC 25-6-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3514, eff Dec 1, 2001)

312 IAC 25-6-16 Surface mining; hydrologic balance; sediment control measures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 16. (a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to do as follows:

(1) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or to run-off outside the permit area.

(2) Meet the more stringent of applicable Indiana or federal effluent limitations.

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to, the following:

(1) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in section 54(b) of this rule.

(2) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off in accordance with the requirements of section 50 of this rule.

(3) Retaining sediment within the disturbed areas.

(4) Diverting run-off away from disturbed areas.

(5) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion.

(6) Using straw dikes, riprap, check dams, mulches, vegetation sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment.

(7) Treating with chemicals.

(Natural Resources Commission; 312 IAC 25-6-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3515, eff Dec 1, 2001)

312 IAC 25-6-17 Surface mining; hydrologic balance; siltation structures

Authority: IC 14-34-2-1
Affected: IC 14-34; IC 25-31

Sec. 17. (a) Siltation structures shall be constructed according to the following:

(1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section 13 of this rule.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 20 of this rule.

(5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 48 through 61 of this rule so that the following requirements are met:

(A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.

(B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.

(C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.

In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which it is located shall be regraded and revegetated in accordance with the reclamation plan and sections 54 through 61 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 20 through 27 of this rule.

(7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.

(b) Siltation structures, where utilized individually or in series, shall be as follows:

(1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.

(2) Designed, constructed, and maintained to achieve each of the following:

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.

(C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).

(E) Minimize, to the extent possible, short circuiting.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.

(I) Be compacted properly.

(J) For impoundments with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one (1) foot of freeboard above the design peak discharge elevation that is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.

(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 13 of this rule.

(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:

(1) The director may approve a single open channel spillway that is:

(A) of nonerodible construction and designed to carry sustained flows; or

(B) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(2) Except as specified in subdivision (3), the required design precipitation event for a siltation structure meeting the spillway requirements of this section is as follows:

(A) For a siltation structure meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(B) For a siltation structure meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(C) For a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a), or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a siltation structure that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a siltation structure shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) in the case of a siltation structure meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) in the case of a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).
(Natural Resources Commission; 312 IAC 25-6-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3515, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2457, eff Jan 1, 2005)

312 IAC 25-6-18 Hydrologic balance; discharge structures
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 18. Discharge from siltation structures, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to do the following:
(1) Reduce erosion.
(2) Prevent deepening or enlargement of stream channels.
(3) Minimize disturbance of the hydrologic balance.
Discharge structures shall be designed according to standard engineering design procedures. *(Natural Resources Commission; 312 IAC 25-6-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001)*

312 IAC 25-6-19 Hydrologic balance; acid-forming and toxic-forming spoil
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 19. Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by doing the following:
(1) Identifying, burying, and treating where necessary, spoil that in the judgment of the director, may be detrimental to vegetation or may adversely affect water quality if not treated or buried.
(2) Preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with section 50 of this rule.
(3) Burying or treating all acid-forming or toxic-forming spoil within a reasonable period of time. If the director determines that such spoil is detrimental to the offsite hydrologic balance, the permittee shall bury or treat the acid-forming or toxic-forming spoil within thirty (30) days.
(Natural Resources Commission; 312 IAC 25-6-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001)

312 IAC 25-6-20 Surface mining; hydrologic balance; permanent and temporary impoundments Version a
Authority: IC 14-34-2-1
Affected: IC 14-34
NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 20. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:
(1) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this rule.
(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-49 as designed to meet the requirements of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.
(3) Impoundments must meet the following criteria for stability:
(A) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a) to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. 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) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

(i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(iii) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(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.

(B) The qualified registered professional engineer shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed or maintained, or both, as

designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

(i) Any appearance of instability, structural weakness, or other hazardous condition.

(ii) Depth and elevation of any impounded waters.

(iii) Existing storage capacity.

(iv) Any existing or required monitoring procedures and instrumentation.

(v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments subject to 30 CFR 77.216 or meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified 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, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. 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 clause following approval by the director:

(i) Impoundments that are completely incised.

(ii) Water impounding structures that impound water to a design elevation no more 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; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.

(iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

(AA) Sewage lagoons.

(BB) Landscaping ponds.

(CC) Pools or wetlands in replaced stream channels.

(DD) Existing impoundments not yet used to facilitate mining.

(EE) Ephemeral water bodies.

(FF) Active mining pits.

(GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundments will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.
(5) The impoundments will be suitable for the approved postmining land use.
(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).
(7) Final grading will provide for adequate safety and access for proposed water users.
(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33⅓%) or the lesser slope needed to do the following:
(A) Protect the public health and safety.
(B) Enable the permittee to place topsoil on the slope under section 11 of this rule and to revegetate the slope under sections 54 through 61 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of a surface coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:
(1) meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or
(2) not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments and surrounding areas and diversion ditches disturbed or created by construction shall be graded, fertilized, seeded, and mulched under sections 54 through 61 of this rule after the embankment is completed. The active upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated under sections 51 and 54 through 61 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. *(Natural Resources Commission; 312 IAC 25-6-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2458, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)*

312 IAC 25-6-20 Surface mining; hydrologic balance; permanent and temporary impoundments Version b

Authority: IC 14-10-2-4; IC 14-34-2-1
Affected: IC 14-34

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 20. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:
(1) An impoundment meeting the:
(A) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or
(B) size or other criteria of 30 CFR 77.216(a);
shall comply with the requirements of 30 CFR 77.216 and this rule.
(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-49 as designed to meet the requirements of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.
(3) Impoundments must meet the following criteria for stability:

(A) An impoundment meeting the:

(i) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or

(ii) size or other criteria of 30 CFR 77.216(a);

shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the:

(i) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or

(ii) size or other criteria of 30 CFR 77.216(a);

except for a coal mine waste impounding structure shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) Instead of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a) to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(5) Foundations and abutments for an impounding structure shall be:

(A) stable during all phases of construction and operation; and

(B) designed based on adequate and accurate information on the foundation conditions.

For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. 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 the following:

(A) Surface erosion at the site.

(B) Sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

(i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(iii) For an impoundment not meeting the:

(AA) size or other criteria of 30 CFR 77.216(a); or

(BB) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60);

a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(A) Inspections shall be made:

(i) regularly during construction;

(ii) upon completion of construction; and

(iii) at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed or maintained, or both, as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

(i) Any appearance of instability, structural weakness, or other hazardous condition.

(ii) Depth and elevation of any impounded waters.

(iii) Existing storage capacity.

(iv) Any existing or required monitoring procedures and instrumentation.

(v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments:

(i) subject to 30 CFR 77.216; or

(ii) meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60);

must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified 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, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. 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 clause following approval by the director:

(i) Impoundments that are completely incised.

(ii) Impoundments that are entirely contained within an incised structure such that the incised structure would completely contain the waters of the impoundment should failure occur and failure would not create a potential threat to public health and safety or threaten significant environmental harm.

(iii) Water impounding structures that:

(AA) impound water to a design elevation not more than five (5) feet above the upstream toe of the structure; and

(BB) can have a storage volume of not more than twenty (20) acre-feet;

provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director before approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.

(iv) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

(AA) Sewage lagoons.
(BB) Landscaping ponds.
(CC) Pools or wetlands in replaced stream channels.
(DD) Existing impoundments not yet used to facilitate mining.
(EE) Ephemeral water bodies.
(FF) Active mining pits.
(GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundments will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for:

(A) agricultural;
(B) industrial;
(C) recreational; or
(D) domestic;

uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundments will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

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

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33 1/3%) or the lesser slope needed to do the following:

(A) Protect the public health and safety.
(B) Enable the permittee to do the following:
(i) Place topsoil on the slope under section 11 of this rule.
(ii) Revegetate the slope under sections 54 through 61 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of a surface coal mining operation. Instead of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

(1) meeting the:

(A) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or
(B) size or other criteria of 30 CFR 77.216(a);

it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event or greater event as specified by the director; or

(2) not meeting the:

(A) size or other criteria of 30 CFR 77.216(a); or
(B) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60);

it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the

director.

(d) All embankments of temporary and permanent impoundments and surrounding areas and diversion ditches disturbed or created by construction shall be graded, fertilized, seeded, and mulched under sections 54 through 61 of this rule after the embankment is completed. The active upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas:

(1) in which the vegetation is not successful; or

(2) where rills and gullies develop;

shall be repaired and revegetated under sections 51 and 54 through 61 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall:

(1) be submitted to the director; and

(2) comply with the requirements of this section.

Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. *(Natural Resources Commission; 312 IAC 25-6-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2458, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site)*

312 IAC 25-6-21 Hydrologic balance; ground water protection

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 21. (a) Backfilled materials shall be placed so as to do the following:

(1) To minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage.

(2) To minimize adverse effects of mining on ground water systems outside the permit area.

(3) To support approved postmining land uses.

(b) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses. *(Natural Resources Commission; 312 IAC 25-6-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3520, eff Dec 1, 2001)*

312 IAC 25-6-22 Hydrologic balance; ground water recharge capacity protection

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 22. (a) Surface mining activities shall be conducted in a manner that facilitates reclamation that will restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition that:

(1) supports the approved postmining land use;

(2) minimizes disturbances to the prevailing hydrologic balance in the permit area and adjacent areas; and

(3) restores the recharge capacity of the mined area to approximate premining condition.

(b) If the director determines that monitoring is not required under section 23(a) of this rule, the director shall waive this section. *(Natural Resources Commission; 312 IAC 25-6-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3520, eff Dec 1, 2001)*

312 IAC 25-6-23 Surface mining; hydrologic balance; surface and ground water monitoring

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 23. (a) This subsection establishes standards for maintaining the hydrologic balance of ground water as follows:

(1) Ground water levels and the quality of ground water shall be monitored, through bond release, in a manner approved by

the director according to the requirements of 312 IAC 25-4-31 to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit and adjacent areas.

(2) When surface mining activities may affect the ground water systems that serve as aquifers that significantly ensure the hydrologic balance of water use on or off the permit area, ground water levels and ground water quality shall be periodically monitored according to the requirements of 312 IAC 25-4-31. Monitoring shall include measurements from a sufficient number of wells and the mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The director may require additional tests and shall require the reporting of the results of these tests to demonstrate compliance with sections 21 through 22 of this rule and this section.

(4) If the analysis of a ground water sample indicates noncompliance with a permit condition, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(C) Minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit to include, but not be limited to:

(i) accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(ii) immediate implementation of measures necessary to mitigate the noncompliance; and

(iii) as soon as practicable issue warning to any person whose health and safety is in imminent danger due to the noncompliance.

(b) This subsection establishes standards for maintaining the hydrologic balance of surface water as follows:

(1) Surface water monitoring, reporting, and record keeping shall be conducted through bond release, in accordance with the provisions of 312 IAC 25-4-32 and as specified in the effective National Pollutant Discharge Elimination System (NPDES) permit.

(2) Copies of the monitoring reports and any noncompliance notifications shall be provided to the director concurrently with the submissions to the NPDES permit authority.

(3) If the analysis of a surface water sample indicates noncompliance with any permit terms or conditions, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(4) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(5) In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under 312 IAC 25-4-47(b) and the following:

(A) Surface water quality shall be protected by handling earth materials, ground water discharges, and run-off in a manner that accomplishes the following:

(i) Minimizes the formation of acid or toxic drainage.

(ii) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area.

(iii) Otherwise prevents water pollution.

(B) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and section 13 of this rule, the operator shall use and maintain the necessary water treatment facilities or water quality controls.

(6) Surface water quality and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 312 IAC 25-4-47(b).

(c) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. *(Natural Resources Commission; 312 IAC 25-6-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3520, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2461, eff Jan 1, 2005)*

312 IAC 25-6-24 Hydrologic balance; transfer of wells
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 24. (a) An exploratory or monitoring well may only be transferred by the person who conducts surface mining activities for further use as a permanent water well with the prior approval of the director. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the director for that approval.

(b) Upon an approved transfer of a well, the transferee shall:

(1) assume primary liability for damages to persons or property from the well;

(2) plug the well when necessary, but in no case later than abandonment of the well; and

(3) assume primary responsibility for compliance with sections 8 through 10 of this rule with respect to the well.

(c) Upon an approved transfer of a well, the transferor shall be secondarily liable for compliance with sections 8 through 10 of this rule until release of the bond or other equivalent guarantee required by 312 IAC 25-5 for the area in which the well is located. *(Natural Resources Commission; 312 IAC 25-6-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001)*

312 IAC 25-6-25 Hydrologic balance; water rights and replacement
Authority: IC 14-34-2-1
Affected: IC 14-25-4; IC 14-34-3

Sec. 25. A person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of that supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in 312 IAC 25-4-28 and 312 IAC 25-4-30 through 312 IAC 25-4-32 shall be used to determine the extent of the impact of mining upon ground water and surface water and other relevant information. *(Natural Resources Commission; 312 IAC 25-6-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, eff Jan 1, 2005)*

312 IAC 25-6-26 Hydrologic balance; water discharge into underground mine
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 26. Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the person who conducts the surface mining activities demonstrates to the director that this diversion or discharge will:

(1) abate water pollution or otherwise eliminate public hazards resulting from surface mining activities;

(2) be discharged as a controlled flow, meeting the effluent limitations of section 13 of this rule for pH and total suspended solids, except as provided in this subdivision and the director may approve that the limitation on total suspended solids be exceeded for:

(A) coal processing waste;

(B) fly ash from a coal-fired facility;

(C) sludge from an acid mine drainage treatment facility;

(D) flue gas desulfurization sludge;

(E) inert materials used for stabilizing underground mines; or

(F) underground mine development wastes;

(3) not result in a discharge from an underground mine to surface waters that causes, results in, or contributes to a violation of applicable water quality standards or effluent limitations; and

(4) minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from surface mining activities.

(Natural Resources Commission; 312 IAC 25-6-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001)

312 IAC 25-6-27 Surface mining; hydrologic balance; siltation structures postmining rehabilitation; diversions, impoundments, and treatment facilities

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 27. Before abandoning a permit area or seeking bond release, the person who conducts the surface mining activities shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this article for permanent structures, and have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The person who conducts the underground mining activities shall renovate such structures if necessary to meet the requirements of this article and to conform to the approved reclamation plan. *(Natural Resources Commission; 312 IAC 25-6-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3522, eff Dec 1, 2001)*

312 IAC 25-6-28 Surface mining; hydrologic balance; stream buffer zone

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 816.57

Sec. 28. (a) No land within one hundred (100) feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities unless the director specifically authorizes surface mining activities closer to or through such a stream. The director may authorize such activities only upon finding that:

(1) surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) if there will be a temporary or permanent stream-channel diversion, it will comply with sections 14 through 15 of this rule.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in section 6 of this rule. *(Natural Resources Commission; 312 IAC 25-6-28; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3522, eff Dec 1, 2001)*

312 IAC 25-6-29 Surface mining; explosives; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 29. (a) Each permittee shall comply with all applicable Indiana and federal laws and regulations in the use of explosives.

(b) Blasts that use more than five (5) pounds of explosive or blasting agent shall be conducted according to the schedule required by section 31 of this rule.

(c) No later than twelve (12) months after the implementation of the blaster certification program as required by 312 IAC 25-9-1 through 312 IAC 25-9-9, all blasting operations shall be conducted under the direct supervision of a certified blaster. Before that time all blasting operations shall be conducted by experienced and competent persons who understand the hazards involved.

(d) After implementation of the blasting certification program, the provisions of subsections (e) through (h) apply.

(e) Blast design requirements are as follows:

(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, not owned by the permittee, public building, school, church, or community or institutional building; or

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

(2) The blast design may be presented as part of a permit application or at a time, prior to the blast, approved by the director.

(3) The blast design shall contain sketches of the typical 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 the structures to be protected, as well as a discussion of design factors to be used, that protect the public and meet the applicable airblast, ground-vibration, and flyrock standards of section 32 of this rule.

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

(5) The director may require changes to the design submitted if necessary to protect public safety or prevent damage to structures in subdivision (1).

(f) The certified blaster and at least one (1) other person shall be present at the firing of a blast. The certified blaster shall either

physically detonate the charge or give the order to detonate the charge.

(g) Persons responsible for blasting operations at a blasting site shall be familiar with the approved blasting plan, and site-specific performance standards.

(h) Each person responsible for blasting operations shall possess a valid certification as required by 312 IAC 25-9-1 through 312 IAC 25-9-9. All decisions concerning:

(1) blast hole size, spacing, or depth;

(2) quantity of explosives in each hole;

(3) total quantity of explosives to be detonated; and

(4) delay periods to be used;

shall be made by a certified blaster. *(Natural Resources Commission; 312 IAC 25-6-29; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3522, eff Dec 1, 2001)*

312 IAC 25-6-30 Surface mining; explosives; preblasting survey

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 30. (a) At least thirty (30) days before initiation of blasting, the permittees shall notify, in writing, all residents or owners of dwellings or other structures located within one-half (½) mile of the permit area how to request a preblasting survey.

(b) The applicant or permittee shall notify the public, by publication at least once a week for four consecutive weeks in a local newspaper of general circulation in the county in which the blasting will occur, that they will conduct a preblasting survey upon the request by a resident or owner of a man made dwelling or structure within one (1) mile of any portion of the permit area. A copy of the public notice and publisher's affidavit or other proof of publication shall be filed with the director not later than four (4) weeks after the last date of publication.

(c) On the written request to the director or the permittee by a resident or owner of a dwelling or structure that is located within one (1) mile of any part of the permit area, the permittee shall promptly conduct a survey of the dwelling or structure and promptly submit a report of the survey to the director and to the person requesting the survey. If a structure is renovated or added to, subsequent to a survey, then upon request by the resident or owner a survey of such additions and renovations shall be performed by the permittee in accordance with this section.

(d) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(e) A written report of the survey shall be prepared and signed by the person who conducted the survey. Copies of the report shall be promptly provided to the person requesting the survey and to the director. If a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program to encourage all dwelling owners to have preblasting surveys, where no request has been made to the director or the permittee, the survey need not be submitted to the director. If the person requesting the survey disagrees with the result of the survey, he or she may notify, in writing, both the permittee and the director of the specific areas of disagreement.

(f) All survey requests received by the operator more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting. A request received less than ten (10) days before the initiation of blasting shall be completed promptly, but need not be completed prior to initiation of blasting. *(Natural Resources Commission; 312 IAC 25-6-30; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3523, eff Dec 1, 2001)*

312 IAC 25-6-31 Surface mining; explosives; publication of blasting schedule

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 31. (a) Blasting schedule publication and distribution requirements are as follows:

(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) 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 to local governments and public utilities and by mail to each residence within one-half (½) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule under subdivisions (1) and (2) at least every twelve (12) months.

(b) The blasting schedule shall contain, at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place.

(2) Days and time periods when explosives are to be detonated.

(3) Methods to be used to control access to the blasting area.

(4) Types and patterns of audible warning and all-clear signals to be used before and after blasting.

(5) Name, address, and telephone number of the permittee.

(c) Before blasting in areas or at times not in a previous blasting schedule, the permittee shall prepare a revised blasting schedule and shall publish and distribute the revised schedule according to the procedures in subsections (a) and (b).

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication. *(Natural Resources Commission; 312 IAC 25-6-31; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3523, eff Dec 1, 2001; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2713, eff Nov 1, 2004)*

312 IAC 25-6-32 Surface mining; explosives; blasting operations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 32. (a) Blasting operations shall be conducted at times approved by the director and announced in the blasting schedule. The permittee shall submit the blasting schedule required by section 31 of this rule to the director for approval sixty (60) days prior to the date of publication specified in section 31(a) of this rule. All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the director upon showing that the public will be protected from adverse noise and other impacts. The director may limit the area covered by a blasting schedule or specify more restrictive time periods if necessary to protect the public health and safety or welfare.

(b) Unscheduled blasting operations may be conducted only when operator or public health and safety require unscheduled detonation. When the permittee conducts unscheduled blasting operations, the permittee shall do the following:

(1) Notify persons within one-half (½) mile of the blasting site using audible warning signals.

(2) Document the reason for the unscheduled blast, including the following:

(A) Why the blast could not be held over to the next day.

(B) When the blast was actually conducted.

(C) The warning signals given in accordance with section 33(17) of this rule.

The director may require any permittee to submit a report of unscheduled blasts if needed to respond to citizen complaints concerning blasting.

(3) Where the unscheduled blast is an unapproved nighttime blast, take sufficient measures to ensure the public will be protected from adverse noise and other impacts.

(c) Warning and all-clear signals of different character or pattern that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (½) mile of the permit area shall be communicated this information through the public notice of the blasting schedule.

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the blasting area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the permittee has reasonably determined that:

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

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

(e) Airblast requirements are as follows:

(1) Airblast shall be controlled so that it does not exceed the maximum limits specified below at any dwelling, public building, school, church, or community or institutional building unless such building is owned by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the permittee from meeting the airblast limitations of this subdivision. The written waiver shall be submitted to the director before

blasting commences.

Lower frequency limits of measuring system, Hz (± 3dB)	Maximum level in dB
0.1 Hz or lower-flat response	134 peak.
2 Hz or lower-flat response	133 peak.
6 Hz or lower-flat response	129 peak.
C-weighted, slow response	105 peak dBC.

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

(3) The permittee may satisfy the provisions of this section by meeting any of the four (4) specifications in the chart in subdivision (1) provided, however, the one-tenth (0.1) hertz or lower-flat response or C-weighted slow response can only be used if approved by the director.

(4) The director may require airblast measurements of any or all blasts and may specify the location of such measurements. If necessary to prevent damage, the director shall specify lower maximum allowable airblast levels than those of subdivision (1) for use in the vicinity of a specific blasting operation.

(5) The permittee shall conduct periodic monitoring to ensure compliance with the airblast standards of subdivision (1).

(f) Flyrock, including material traveling along the ground, shall not be cast from the blasting site more than one-half (½) the distance to the nearest dwelling or other occupied structure, beyond the boundary of the bonded area, or beyond the area of regulated access required under subsection (d).

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

(h) Requirements for maximum ground vibrations are as follows:

(1) In all blasting operations, except as otherwise authorized in this section, the maximum ground vibration shall not exceed the limits approved in the blasting plan required by 312 IAC 25-4-42. The maximum ground vibration at the location of any dwelling, public building, school, church, or community or institutional building shall be established in accordance with either:

(A) the maximum peak particle-velocity limits of subdivision (2);

(B) the scaled-distance equation of subdivision (3);

(C) the blasting-level chart of subdivision (4); or

(D) by the director under subdivision (5).

All structures in the vicinity of the blasting area, not listed in this subdivision, including, but not limited to, water towers, pipelines, and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the permittee in the blasting plan and approved by the director. Provided, however, abandoned underground workings that are within the permit boundary and are to be mined through according to approved mining plans are not subject to a ground vibration limitation.

(2) Maximum peak particle velocity requirements as follows:

(A) The maximum ground vibration, measured as peak particle velocity, shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building:

Distance (D) from the blasting site (feet)	Maximum allowable peak particle velocity (Vmax) for ground vibration (inch/second)	Scaled-distance factor (Ds) to be applied without seismic monitoring[1]
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1]Applicable to the scaled distance equation of subdivision (3)(A).

(B) A seismographic record shall be obtained for each blast. The results of the record shall be made a part of the blasting record required by section 33 of this rule. Particle velocity shall be measured in three (3) mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three (3) measurements.

(3) Scaled-distance equation as follows:

(A) A permittee may use the scaled-distance equation:

$$W = (D/Ds)^2$$

to determine the allowable charge-weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring.

Where: W = Maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period.

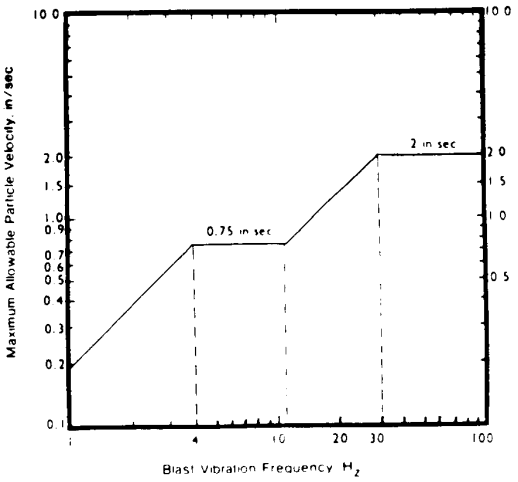
D = Distance, in feet, from the blasting site to the nearest protected structure.

Ds = Scaled-distance factor.

that may initially be approved by the director using the values for scaled-distance factor listed in subdivision (2)(A).

(B) The development of a modified scaled-distance factor may be authorized by the director on receipt of a written request by the permittee, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of subdivision (2)(A) at a ninety-five percent (95%) confidence level.

(4) A permittee may use the ground vibration limits found in the following chart to determine the maximum allowable ground vibration:



If the chart limits are used, a seismographic record including both particle-velocity and vibration-frequency levels shall be obtained for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the director before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the director beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The director may require a permittee to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(i) The maximum airblast and ground vibration limitations of subsections (e) and (h) shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another party.

(2) At structures owned by the permittee, and leased to another party if a written waiver by the lessee is submitted to the director prior to blasting.

(Natural Resources Commission; 312 IAC 25-6-32; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3524, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106)

312 IAC 25-6-33 Surface mining; explosives; records of blasting operations

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 33. A record of each blast, including seismograph records when obtained, shall be retained by the permittee for at least three (3) years and shall be made available for inspection by the director and the public on request. The record shall contain the following data:

(1) Name of the operator conducting the blast.
(2) Location, date, and time of blast.
(3) Name, certification number, and signature of the certified blaster conducting the blast.
(4) Direction and distance, in feet, to the nearest dwelling, school, church, or community or institutional building that is not owned or leased by the permittee.
(5) Weather conditions that may cause possible adverse blasting effects, including temperature, wind direction, and approximate velocity.
(6) Type of material blasted.
(7) Sketches of the blast pattern, including the following:
    (A) Number of holes.
    (B) Burden.
    (C) Spacing.
    (D) Decks.
    (E) Delay pattern.
(8) Diameter and depth of holes.
(9) Types of explosives used.
(10) Total weight of explosives used per hole.
(11) Maximum weight of explosives detonated within any 8-millisecond period.
(12) Initiation system.
(13) Type and length of stemming.
(14) Mats or other protections used.
(15) Type of delay detonator and delay periods used.
(16) Seismographic and airblast records, when obtained, shall include the following:
    (A) Exact location of instrument and the date, time, and its distance from the blast.
    (B) Type of instrument, sensitivity, and calibration signal or certification of annual calibration.
    (C) Name of the person and firm taking the seismograph reading.
    (D) Name of the person and firm analyzing the seismographic record.
    (E) The ground vibration and/or airblast level recorded.
(17) Reasons and conditions for each unscheduled blast.

(Natural Resources Commission; 312 IAC 25-6-33; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3526, eff Dec 1, 2001)

312 IAC 25-6-34 Surface mining; disposal of excess spoil

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 34. (a) All excess spoil material resulting from mining and reclamation activities must be placed as follows:

(1) Spoil shall be transported and placed in a controlled manner in a position for concurrent compaction, and to:
    (A) assure stability;
    (B) prevent mass movement; and
    (C) ensure a long term static safety factor of one and five-tenths (1.5).
(2) The areas of disposal shall be within the bonded permit areas, and all organic matter shall be removed immediately before spoil placement.
(3) Sufficient surface and internal drainage systems and diversion ditches shall be used to prevent spoil erosion and movement.
(4) The disposal area shall not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent the infiltration of the water into the spoil pile.
(5) If placed on a slope, the spoil shall be placed upon the most moderate slope available that the director determines will ensure compliance with IC 14-34. If possible, the spoil shall be placed upon or above a natural terrace, bench, or berm if this placement will provide additional stability and prevent mass movement.

(6) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement shall be constructed.
(7) The final configuration shall be compatible with the natural drainage pattern and surroundings and suitable for intended uses. Terraces may be constructed on the outslope if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than fifty percent (50%), 2h:1v.
(8) The spoil disposal area shall be designed and inspected during construction under the supervision of, and certified after construction by, a qualified registered professional engineer.
(9) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings upon the stability of the structure.
(10) Spoil shall be placed in horizontal lifts not exceeding four (4) feet thick, except where the director approves a greater thickness based upon:
(A) a certification by a qualified registered professional engineer that the design ensures the stability of the fill; and
(B) a demonstration by the permittee that all other requirements of this section are satisfied.
(11) No permanent impoundments shall be allowed on the completed fill. Small depressions may be allowed by the director 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 fill.
(b) All box cut spoil that is demonstrated to be excess spoil under section 50 of this rule must conform to the following:
(1) Topsoil shall be removed from the area upon which the box cut spoil will be placed.
(2) The topsoil shall be handled consistently with the topsoil storage and replacement requirements of this article.
(3) If placed on a slope, the box cut spoil shall be placed upon the most moderate slope available which the director determines will ensure compliance with IC 14-34 and which will prevent mass movement.
(4) The final graded slope of box cut spoil areas shall not exceed thirty-three and one-third percent (33⅓%) or any lesser slope approved by the director based upon a consideration of soil, climate, land use, or other characteristics of the surrounding area.
(5) The final surface configuration shall be compatible with the natural drainage pattern and surroundings, and the reclamation of the box cut spoil shall achieve an ecologically sound land use compatible with existing land use policies and plans.
(c) Excess spoil areas, including box cut spoil approved as excess as outlined under subsection (b), shall be inspected by a qualified registered professional engineer or another qualified specialist under the direction of a qualified registered professional engineer, who shall periodically inspect the fill during construction. The professional engineer or specialist must be experienced in the construction of earth and rock fills.
(d) The inspections required under subsection (c) must be made at least quarterly throughout construction and during critical construction periods. Critical construction periods include the following:
(1) Foundation preparation including the removal of organic material and topsoil.
(2) The placement of underdrains and protective filter systems.
(3) The installation of final surface drainage systems.
(4) The placement and compaction of fill materials.
(5) The establishment of final graded and revegetated fill.
(e) The registered professional engineer shall provide a report to the director promptly after each inspection performed under subsection (c) that certifies that any fill has been constructed and maintained as designed and under the approved reclamation plan and this article. The report shall identify any appearance of instability, structural weakness, or other hazardous condition. A report on any drainage system or protective filter shall include color photographs taken during and after construction (but before an underdrain is covered with excess spoil). If an underdrain system is constructed in phases, each phase shall be certified separately.
(f) A copy of each inspection report shall be retained at or near the mine site. *(Natural Resources Commission; 312 IAC 25-6-34; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3526, eff Dec 1, 2001)*

312 IAC 25-6-35 Surface mining; protection of underground mines
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 35. No surface coal mining activities shall be conducted closer than five hundred (500) feet to any point of either an active or abandoned underground mine, except to the extent that:

(1) the nature, timing, and sequence of the operations that propose to mine closer than five hundred (500) feet of an active underground mine are jointly approved by the department, the Mine Safety and Health Administration, and the Indiana Bureau of Mines and Mining; and

(2) the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(Natural Resources Commission; 312 IAC 25-6-35; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3528, eff Dec 1, 2001)

312 IAC 25-6-36 Surface mining; coal mine waste; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 36. (a) All coal mine waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed in new or existing disposal areas within a permit area. The disposal area shall be designed, constructed, and maintained in accordance with section 34 of this rule, this section, and sections 37 through 41 of this rule.

(b) Coal mine waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles, may be disposed of in the permit area, only if approved by the director.

(c) Approval for the disposal of waste from subsection (a) or (b) shall be based on a showing by the person who conducts surface mining activities in the permit area, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of such materials:

(1) minimizes adverse effects of leachate and surface water run-off on surface and ground water quality and quantity;

(2) does not create public health hazards;

(3) ensures mass stability and prevents mass movement during and after construction;

(4) ensures that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use by covering with a four (4) foot layer of the best available, nontoxic, noncombustible material. The director may allow less than four (4) feet of cover based upon physical and chemical analyses which show that the requirements of this section and sections 37 through 41 of this rule are met; and

(5) prevents combustion.

(d) Design certification requirements are as follows:

(1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the director. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long term static safety factor of one and five-tenths (1.5). The foundation and abutments must be stable under all conditions of construction.

(e) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(f) If any examination or inspection discloses that a potential hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(g) Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the director and the Mine Safety and Health Administration under section 41 of this rule. *(Natural Resources Commission; 312 IAC 25-6-36; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3528, eff Dec 1, 2001)*

312 IAC 25-6-37 Surface mining; coal mine waste; refuse piles; site inspection

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 37. (a) All refuse piles shall be inspected, on behalf of the person conducting surface mining activities, by a qualified

registered engineer, or a Mine Safety and Health Administration certified inspector or another qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(b) The inspection required under subsection (a) shall occur at least quarterly throughout construction and during critical construction periods. Examples of critical construction periods include the following:

(1) Foundation preparation, including the removal of organic material and topsoil.

(2) The placement of underdrains and protective filter systems.

(3) The installation of final surface drainage systems.

(4) The establishment of the final graded and revegetated facility.

(c) In addition to the inspections required under subsection (b), regular inspections by a qualified registered professional engineer; or a Mine Safety and Health Administration certified inspector or other qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer, must also be conducted during the placement and compaction of coal mine waste materials. The director shall require more frequent inspection under this subsection and subsection (b) based upon a finding of the potential danger to the health or safety of the public and the potential harm to land, air, and water resources. Inspections may terminate when the refuse pile has been adequately reclaimed.

(d) A person who conducts an inspection under this section shall consider the following:

(1) The steepness of slopes, seepage, and other visible factors which could indicate potential failure.

(2) The results of failure with respect to the threat to human life and property.

(e) A person who conducts an inspection under this section must provide a certified copy of the inspection report to the director promptly after each inspection. The report shall state whether the refuse pile is constructed and maintained as designed and in accordance with the approved reclamation plan.

(f) The permittee shall maintain copies of the inspection findings at or near the mine site.

(g) An inspection shall include observations and tests required to ensure that all organic material and topsoil have been removed to the extent necessary to evaluate the potential hazard to human life and property.

(h) If any inspection discloses that a hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately, and the director shall notify the appropriate agencies that other emergency procedures are required to protect the public from the coal processing waste area.

(i) A certified report on a drainage system and protective filters required by subsections (b) and (e) must 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 certified 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. *(Natural Resources Commission; 312 IAC 25-6-37; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3529, eff Dec 1, 2001)*

312 IAC 25-6-38 Coal processing waste; refuse piles; water control measures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 38. Refuse piles shall meet the requirements of section 36 of this rule, 30 CFR 77.214, 30 CFR 77.215, and the following:

(1) Drainage control shall be provided as follows:

(A) If the disposal area contains springs, natural or manmade water 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.

(B) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Run-off from the areas above the refuse pile and run-off from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of section 14 of this rule to safely pass the run-off from a one hundred (100) year, six (6) hour precipitation event. Run-off diverted from undisturbed areas need not be commingled with run-off from the surface of the refuse pile.

(C) Underdrains shall comply with the requirements of section 39 of this rule.

(2) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels

that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(3) The following are placement requirements:

(A) 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 11 of this rule. If approved by the director, 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.

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

(C) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the director if they are not incompatible with the stability of the refuse pile and if they are needed to:

(i) retain moisture;

(ii) minimize erosion;

(iii) create and enhance wildlife habitat; or

(iv) assist revegetation.

(D) 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 earthen material, in a manner that does not impede drainage from the underdrains. The director may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of sections 54 through 61 of this rule will be met.

(Natural Resources Commission; 312 IAC 25-6-38; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3529, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-6-39 Surface mining; coal mine waste; refuse piles; construction requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 39. (a) Refuse piles shall be designed to conform to applicable Mine Safety and Health Administration standards, section 36 of this rule, and the additional requirements of this section.

(b) Following final grading of the refuse pile, the site shall be covered with the best available nontoxic, noncombustible material, in accordance with sections 50(f) and 11 of this rule, in a manner that does not impede drainage from the underdrains. The refuse pile shall be revegetated in accordance with sections 54 through 61 of this rule.

(c) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices, and meet any design criteria established by the director. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-forming and nontoxic-forming rock, for example:

(1) natural sand and gravel;

(2) sandstone;

(3) limestone; or

(4) other durable rock;

that does not slake in water or degrade to soil material, and that is free of coal, clay, or other nondurable material. Perforated pipe underdrains shall be corrosion-resistant and shall have characteristics consistent with the long term life of the fill. *(Natural Resources Commission; 312 IAC 25-6-39; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3530, eff Dec 1, 2001)*

312 IAC 25-6-40 Coal processing waste; burning

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 40. Coal processing waste fires shall be extinguished by the person who conducts the surface mining activities and in accordance with applicable Mine Safety and Health Administration (MSHA) standards. *(Natural Resources Commission; 312 IAC*

25-6-40; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3530, eff Dec 1, 2001)

312 IAC 25-6-41 Coal processing waste; return to underground workings
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 41. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the director under 312 IAC 25-4-96. *(Natural Resources Commission; 312 IAC 25-6-41; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3531, eff Dec 1, 2001)*

312 IAC 25-6-42 Disposal of noncoal wastes
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 42. (a) Noncoal wastes, including, but not limited to:
(1) grease;
(2) lubricants;
(3) paints;
(4) flammable liquids;
(5) garbage;
(6) abandoned mining machinery;
(7) lumber; and
(8) other combustibles generated during surface mining activities;
shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or ground water, fires are prevented, and the area remains stable and suitable for reclamation and revegetation.

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with sections 54 through 61 of this rule. Operation of the disposal site shall be conducted in accordance with all local, Indiana, and federal requirements.

(c) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight (8) feet of any coal outcrop or coal storage area. *(Natural Resources Commission; 312 IAC 25-6-42; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3531, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-6-43 Surface mining; coal mine waste; dams and embankments; general requirements
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 43. (a) A new or existing impounding structure constructed of coal mine waste or intended to impound coal mine waste must comply with sections 34, 36, and 37 of this rule, this section, and sections 44 through 45 of this rule.

(b) Coal mine waste shall not be used for the construction of an impounding structure unless the permittee demonstrates to the director that the stability of the structure achieves each of the following:
(1) Is in conformance with this rule.
(2) The use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the impounding structure and the potential impact of acid mine seepage through the structure must be discussed in detail in the design plan submitted in the reclamation plan under 312 IAC 25-4-49.

(c) An impounding structure constructed of coal mine waste or intended to impound coal mine waste must be designed, constructed, and maintained under section 20 of this rule. The impounding structure cannot be retained permanently as part of the approved postmining land use.

(d) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have:

(1) sufficient spillway capacity to safely pass;

(2) adequate storage capacity to safely contain; or

(3) a combination of storage capacity and spillway capacity to safely control;

the probable maximum precipitation of a six (6) hour precipitation event or greater event as specified by the director. Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(e) Run-off from areas above the disposal facility or run-off from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to satisfy section 15 of this rule and to safely pass run-off from the one hundred (100) year, six (6) hour design precipitation event.

(f) As used in this section, "impounding structure" does not include incised impoundments or impoundments plugged by massive earthen fills, as determined by the Mine Safety and Health Administration, that would be treated as incised impoundments under good engineering practices.

(g) For an impounding structure constructed of coal mine waste or impounding coal mine waste, at least ninety percent (90%) of the water stored during the design precipitation event shall be removed within the ten (10) day period following the design precipitation event. *(Natural Resources Commission; 312 IAC 25-6-43; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3531, eff Dec 1, 2001)*

312 IAC 25-6-44 Coal processing waste; dams and embankments; site preparation

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 44. The following requirements apply before coal processing waste is placed at a dam or embankment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with sections 5 through 43 of this rule, this section, and sections 45 through 68 of this rule.

(2) Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with section 14 of this rule. Adequate outlets for discharge from these diversions shall be in accordance with section 18 of this rule. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to protect public health and safety and the environment. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with section 18 of this rule. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with sections 12 through 17 of this rule.

(Natural Resources Commission; 312 IAC 25-6-44; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3532, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-6-45 Surface mining; coal mine waste; dams and embankments; design and construction

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 45. (a) The design of each dam and embankment constructed of processing waste shall comply with the applicable requirements of sections 20 and 36 of this rule, modified as follows:

(1) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet.

(2) The dam and embankment shall have a minimum safety factor of one and five-tenths (1.5) for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(3) The dam or embankment foundation and abutments 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 to determine the safety factors of the dam or embankment for all loading conditions appearing in subdivision (2).

(b) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(c) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety percent (90%) of the water stored during the design precipitation event can be removed within a ten (10) day period. *(Natural Resources Commission; 312 IAC 25-6-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3532, eff Dec 1, 2001)*

312 IAC 25-6-46 Surface mining; protection of fish, wildlife, and related environmental values

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 46. (a) Any person conducting surface mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and their habitats, and achieve enhancement of those resources where practicable.

(b) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of these species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.). The permittee shall promptly report to the director any endangered or threatened species that is listed by the state or federal government within the permit area of which the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(c) A person who conducts surface mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA, (1970)). Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds. For informational purposes, these two (2) documents are available at the OSM Office, United States Department of the Interior, South Interior Building, Washington, D.C., 20240, at each OSM regional office, district office, and field office and at the central and field office of the division of reclamation.

(d) No surface mining activity shall be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the director any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(e) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available, establish the following:

(1) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law.

(2) Fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain a hazardous concentration of toxic-forming materials.

(3) Restore, enhance, where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.

(4) Restore, enhance, where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetlands areas.

(5) Afford protection to aquatic communities by avoiding stream channels as required in section 28 of this rule or restoring stream channels as required in section 15 of this rule.

(6) Not use persistent pesticides on the area during surface mining and reclamation activities unless approved by the director.

(7) To the extent possible, prevent, control, and suppress range, forest, and coal fires that are not approved by the director as part of a management plan.

(8) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of sections 54 through 61 of this rule, establish the following:

(A) Select plant species to be used on reclaimed areas, based on the following criteria:

(i) Their proven nutritional value for fish and wildlife.

(ii) Their uses as cover for fish and wildlife.

(iii) Their ability to support and enhance fish and wildlife habitat after release of bonds.

(B) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed to

optimize edge effect, cover, and other benefits for fish and wildlife.

(9) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, 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. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished.

(10) Where the primary land use is to be residential, public service, or industrial intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

(Natural Resources Commission; 312 IAC 25-6-46; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3532, eff Dec 1, 2001)

312 IAC 25-6-47 Surface mining; slides and other damage

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 47. (a) An undisturbed natural barrier 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 director 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 effect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the director by the fastest available means and comply with any remedial measures required by the director. *(Natural Resources Commission; 312 IAC 25-6-47; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3533, eff Dec 1, 2001)*

312 IAC 25-6-48 Surface mining; contemporaneous reclamation

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 48. Surface mining; reclamation efforts, including, but not limited to:

(1) backfilling;
(2) grading;
(3) topsoil replacement; and
(4) revegetation;

of all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations. *(Natural Resources Commission; 312 IAC 25-6-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3533, eff Dec 1, 2001)*

312 IAC 25-6-49 Surface mining; backfilling and grading; timing limitations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 49. (a) Except as otherwise approved by the director in the approved permit or as provided in subsections (b) and (c), backfilling and grading shall be accomplished as follows:

(1) In mining operations in which overburden removal is accomplished primarily by a dragline, shovel, or similar excavating machine that deposits the overburden into spoil ridges, within one hundred eighty (180) days of deposition, provided that no more than four (4) spoil ridges remain at any one (1) time.

(2) For direct haul-back operations, where spoil is excavated from an advancing pit and hauled back, dumped, and graded into an inactive pit as one (1) operation, rough backfilling and grading shall be carried out continuously behind the pit or pits being worked. At no time shall there be more than four (4) open pits.

(3) For operations that do not use a dragline or shovel for spoil removal and do not employ the direct haul-back method of operation, rough backfilling and grading of spoil shall be completed within one hundred eighty (180) days after it is deposited, and no more than four (4) pits shall be open at any one (1) time.

(4) For all operations, rough backfilling and grading of boxcut or excess spoil shall be completed within one (1) year after it is deposited. The director may grant additional time if the permittee can demonstrate, in writing, that additional time is

necessary.

(b) The director may extend the timing limitations of subsection (a) by the duration of any temporary cessation of mining operations for which the permittee files the notice required by section 62(b) of this rule.

(c) The director may grant variances to the limitations of subsection (a) for good cause. *(Natural Resources Commission; 312 IAC 25-6-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3534, eff Dec 1, 2001)*

312 IAC 25-6-50 Surface mining; backfilling and grading; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 50. (a) Disturbed areas shall be backfilled and graded to include the following:

(1) Achieve the approximate original contour, except as provided in subsection (k).

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in subsections (h) and (k)(2).

(3) Achieve a postmining slope that does not exceed 3:1 (h:v) or the lesser slope that is needed to achieve a minimum long term static safety factor of one and three-tenths (1.3) and to prevent slides. This requirement does not apply to ditches, dams, levees, and similar constructed features.

(4) Minimize erosion and water pollution both on and off the site.

(5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed under subsection (d) or section 34 of this rule, shall be returned to the mined-out area.

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

(d) Spoil may be placed on the bonded, permitted 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 is removed from the area.

(2) The topsoil on the area is removed, segregated, stored, and redistributed under section 11 of this rule.

(3) The spoil is backfilled and graded on the area under this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be under sections 36 through 38 of this rule, except that a long term static safety factor of one and three-tenths (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 earthen material, or treated, to control the impact of surface and ground water under section 12 of this rule to prevent sustained combustion and to minimize adverse effects on plant growth and the approved postmining land use.

(g) The director may approve as a term of a permit the construction of cut-and-fill terraces if the permittee demonstrates either of the following:

(1) That the terraces are needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes if the terraces are compatible with the approved postmining land use.

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use. Final grading under this subdivision may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions (which do not interfere with the approved postmining land use) may be constructed if needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may remain if authorized by the director under section 20 of this rule.

(j) Preparation of final-graded surfaces shall be conducted to minimize erosion and to provide a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour if:

(1) approval is obtained from the director in the approved permit application for a variance from approximate original contour requirements under 312 IAC 25-4-101;

(2) incomplete elimination of highwalls in previously disturbed areas is approved under subsection (l); or

(3) the standards for thick overburden in section 52 of this rule are met.

(l) If sufficient spoil is not otherwise available to comply with this section, the director may approve as a term of a permit a modification of the requirements of this section under section 144 of this rule for surface mining operations that affect previously mined lands that:

(1) contain a preexisting highwall; and
(2) have not been restored to the standards of this section.
(Natural Resources Commission; 312 IAC 25-6-50; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3534, eff Dec 1, 2001)

312 IAC 25-6-51 Surface mining; stabilization of surface areas
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 51. (a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) When rills and gullies form in regraded, topsoiled areas and the rills and gullies disrupt the approved postmining land use, disrupt the reestablishment of vegetative cover or cause or contribute to a violation of applicable effluent limitations and the rill or gully is not vegetated or otherwise stabilized, the rill or gully shall be:
(1) filled, regraded, or otherwise stabilized;
(2) topsoil shall be replaced; and
(3) the area shall be reseeded or replanted.
(Natural Resources Commission; 312 IAC 25-6-51; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3535, eff Dec 1, 2001)

312 IAC 25-6-52 Surface mining; backfilling and grading; thick overburden
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 52. In surface coal mining operations where the thickness of the overburden is large relative to the thickness of the coal deposit and where the permittee demonstrates that the volume of the spoil and other waste materials is more than sufficient to restore the disturbed area to approximate original contour, the permittee shall, at a minimum, after restoring to approximate original contour, do the following:
(1) Use the spoil and waste materials to attain the lowest practicable grade, but not more than 3:1 (h:v) or such lesser slope as may be necessary to obtain a long term minimum static safety factor of 1.3.
(2) Meet the requirements of section 50(a)(2) through 50(j) of this rule.
(3) Dispose of any excess spoil in accordance with section 34 of this rule.
(Natural Resources Commission; 312 IAC 25-6-52; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3535, eff Dec 1, 2001)

312 IAC 25-6-53 Surface mining; backfilling and grading; previously mined areas
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 53. (a) A remining operation on a site that contains a preexisting highwall shall comply with sections 49 through 52 of this rule, except as provided under this section.

(b) Section 50(a)(2) of this rule does not apply to a remining operation if the volume of reasonably available soil is demonstrated in writing to the director to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall must be eliminated to the extent technically practicable as follows:
(1) Spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.
(2) The backfill shall be graded to a slope that is compatible with the approved postmining land use and provides adequate drainage and long term stability.
(3) A highwall remnant shall be stable and shall not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate to the director that the highwall remnant is stable.
(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if the disturbance will cause instability of the remaining spoil or will otherwise increase hazards to public health, safety, or the environment.
(Natural Resources Commission; 312 IAC 25-6-53; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3535, eff Dec 1, 2001)

312 IAC 25-6-54 Surface mining; revegetation; general requirements
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 54. (a) Each person who conducts surface mining activities shall establish, on all affected land except water areas and surface areas of roads that are approved as a part of the postmining land use, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area and that supports the approved postmining land use.

(b) All revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use, such that:

(1) vegetative cover shall be capable of stabilizing the soil surface from erosion; and

(2) if both the premining and postmining land uses are cropland, planting of the crops normally grown will meet the requirements of subsection (a).

(Natural Resources Commission; 312 IAC 25-6-54; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3536, eff Dec 1, 2001)

312 IAC 25-6-55 Surface mining; revegetation; use of introduced species
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 55. (a) Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan if approved by the director under the following conditions:

(1) The species are compatible with the plant and animal species of the region.

(2) The species meet the requirements of applicable Indiana seed or introduced species statutes and are not poisonous or noxious.

(b) As used in this section, "native species" means a species previously introduced and adapted to the state in the general vicinity of the coal producing region. *(Natural Resources Commission; 312 IAC 25-6-55; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3536, eff Dec 1, 2001)*

312 IAC 25-6-56 Surface mining; revegetation; timing
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 56. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final soil preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established. *(Natural Resources Commission; 312 IAC 25-6-56; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3536, eff Dec 1, 2001)*

312 IAC 25-6-57 Surface mining; revegetation; mulching and other soil stabilizing practices
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 57. (a) Suitable mulch or other necessary soil stabilizing practices shall be used on all regraded and topsoiled areas to do any of the following:

(1) Control erosion.

(2) Promote germination of seeds.

(3) Increase the moisture-retention capacity of the soil.

The director may, on a case-by-case basis, suspend the requirement for mulch if the permittee can demonstrate that alternative procedures will achieve the requirements of sections 59 through 61 of this rule and do not cause or contribute to air or water pollution.

(b) When required by the director, mulches shall be mechanically or chemically anchored to the soil surface to assure effective

protection of the soil and vegetation.

(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the director determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use. *(Natural Resources Commission; 312 IAC 25-6-57; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3536, eff Dec 1, 2001)*

312 IAC 25-6-58 Surface mining; revegetation; grazing

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 58. When the approved postmining land use is pasture land, the reclaimed land may be used for livestock grazing if approved by the director. *(Natural Resources Commission; 312 IAC 25-6-58; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3537, eff Dec 1, 2001)*

312 IAC 25-6-59 Surface mining; revegetation; standards for success for nonprime farmland

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 59. (a) Success of revegetation is judged on the following:

(1) The effectiveness of the vegetation for the approved postmining land use.

(2) The extent of cover compared to the cover occurring in natural vegetation in the area.

(3) The general requirements of section 54 of this rule.

(b) Ground cover, production, and stocking are satisfactory if they are not less than ninety percent (90%) of the success standard as determined by the sampling techniques under section 60 of this rule and the statistical methodology under section 61 of this rule.

(c) Standards for success are applied under the approved postmining land use and must include the following conditions:

(1) For a previously mined area that was not reclaimed under sections 1 through 58 of this rule, this section, and sections 60 through 148 of this rule, the ground cover of living plants shall be as follows:

(A) Not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(B) Not less than the cover existing before redisturbance.

(C) Adequate to control erosion.

(2) For an area to be developed for an industrial/commercial or a residential use less than two (2) years after regrading is completed, the ground cover of living plants shall be not less than what is required to control erosion.

(3) For pastureland, the ground cover success standard shall be one hundred percent (100%). In addition, the production of living plants on the revegetated area shall be equal to one (1) of the following:

(A) An approved reference area.

(B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

(C) A target yield determined by the following formula:

$$\text{Target Yield} = \text{NRCS Target Yield} \times (\text{CCA}/10\text{ Year CA})$$

Where: NRCS Target Yield = The average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used and shall be contained in the appropriate

sections of the permit application.

CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

10 Year CA = The 10 year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the 9 preceding years.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(4) For an area to be developed as a shelter belt or for a fish and wildlife habitat, recreation, or forestry land use, the success of vegetation is determined on the basis of tree, shrub, or half-shrub stocking and ground cover. The area seeded to a ground cover is not acceptable unless the director determines the ground cover is adequate to control erosion. Stocking rates are those in the approved permit reclamation plan and are not less than the following:

(A) Four hundred fifty (450) plantings per acre for a forestry use.

(B) A rate appropriate to support a shelter belt or a land use (other than forestry) described in this subsection. The rate established under this clause may be adjusted for particular areas within a shelter belt or land use in order to support a diverse wildlife habitat if the adjusted rate is approved in the plan of reclamation and will not result in erosion.

(5) For an area to be used as cropland, crop production on the revegetated area must be at least equal to one (1) of the following:

(A) An approved reference area.

(B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

(C) A target yield determined by the following formula:

Target Yield = CCA × (NRCSP/NRCSC)

Where:

CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

NRCSP = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that existed on the permit area at the time the permit was issued.

NRCSC = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that is shown to exist in the county on the most current county soil survey.

A croppable soil is any soil that the Natural Resources Conservation Service has defined as being in capability Class I, II, III, or IV.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(6) A crop grown to demonstrate satisfaction of the requirements of subdivision (5) must be one (1) or more of the crops listed in 312 IAC 25-1-33 and as specified in the reclamation plan. An adjustment to predicted crop yields may be made according to accepted agronomic practices, after consultation with the Natural Resources Conservation Service or other sources approved by the director for factors, including disease, weather, tillage management, pests, and seed or plant selection.

(7) The aggregate of the barren areas within an area under evaluation must not exceed five percent (5%) of the area. Revegetation is not successful unless each barren area within an area under evaluation is as follows:

(A) Smaller than seven hundred fifty (750) square feet.

(B) Completely surrounded by desirable vegetation.

(C) In compliance with sections 11 and 50 of this rule.

(d) A single reference area may be used for more than one (1) permit area if the requirements of this subsection are met with respect to each permit area. A reference area used to establish success standards under this section must meet the following requirements:

(1) If the area to be represented contains more than fifty (50) acres, the reference area shall contain at least five (5) acres unless the director approves a smaller area. If the area to be represented contains less than fifty (50) acres, the reference area shall be the greater of:

(A) ten percent (10%) of the area to be represented; or

(B) one (1) acre.

(2) Each reference area shall be representative of the geology, soils, slopes, and vegetation of the area to be represented.

(3) Management of the reference area shall be identical to the area to be represented.

(4) Each reference area must be located within twenty (20) miles of the area to be represented.

(5) Right-of-entry on the reference area for the authorized representatives of the director must be secured by written agreement or consent for the entire period in which the reference area will be used.

(e) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

(1) the selective husbandry practices can be expected to continue as part of the postmining land use; or

(2) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(f) Selective husbandry practices that may be approved under subsection (e) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

(1) Disease, pest, and vermin control.

(2) Repair of rills and gullies.

(3) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(g) The success standards identified in subsection (c) shall be met during the growing seasons of any two (2) years of the responsibility period, except the first year, for cropland or pastureland. The success standards for any other land use are measured by the last year of the responsibility period. *(Natural Resources Commission; 312 IAC 25-6-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3537, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106)*

312 IAC 25-6-60 Revegetation; sampling techniques for nonprime farmland

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 60. (a) Success of revegetation is evaluated according to the standards as set forth in section 59 of this rule and (if a measurable success standard applies) using sampling techniques set forth in this section or that:

(1) have a ninety percent (90%) statistical confidence interval (in other words, a one (1) sided test with a ten-hundredths (0.10) alpha error); and

(2) are approved by the director.

(b) The following methods may be used to evaluate ground cover:

(1) The percentage of ground cover shall be assessed within one (1) foot square units randomly located in the area under evaluation. Each unit shall be divided into one hundred (100) equal parts to form a grid. The percentage of ground cover within each unit is equal to the number of parts that contain vegetation or litter. The minimum number of observations for the area under evaluation and methods of analysis shall be determined under section 61 of this rule.

(2) The percentage of ground cover shall be assessed by determining the number of points at one (1) foot intervals that intersect ground cover along one hundred (100) foot lines randomly located in the area under evaluation. A point shall be considered as intersecting ground cover when the location immediately under the point contains either the aerial parts of the vegetation or litter that is produced naturally on-site. The percentage of vegetative ground cover assessed for each line is an individual observation. The minimum number of observations for the area under evaluation and the methods of analysis are determined under section 61 of this rule.

(c) The following methods may be used to evaluate the production of living plants on cropland used for hay and on pastureland:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be cut, adequately cured under acceptable agronomic practices, and baled. The total number of bales produced per cutting from the area under evaluation shall be determined. The weight of individual bales randomly selected from the area under evaluation shall be determined. The weight of each bale shall be considered an individual observation for the purposes of section 61 of this rule. The minimum number of bales to be weighed shall be determined using the following table:

Size of Area Under Evaluation (Acres)	Minimum Number of Small Bales (Less than 100 Pounds)	Minimum Number of Large Bales (At Least 100 Pounds)
0–39	10	4
40–279	15	6
280–639	20	10

For areas larger than six hundred forty (640) acres, one (1) additional bale is required for each additional thirty-five (35) acres. The adequacy of the sample and the mean weight of the bales shall be determined using the methods set forth in section 61(c) and 61(e) of this rule. The production of the area under evaluation shall be determined using the following formula:

$$P = (\overline{X} \times N_B) \div (A \times 2{,}000)$$

Where: P = Production of area (tons per acre).

$\overline{X}$ = Mean weight for weight of bale (pounds per bale).

N_B = Total number of bales produced.

A = Size of area under evaluation (acres).

(2) With respect to a test plot (an area that, due to soils, topography, age, management, locality, and any other factor that affects production, can be expected to produce the same yield as the area being evaluated), the director shall determine whether a test plot is representative of the evaluated area. Test plots collectively shall be at least ten percent (10%) of the area represented unless the director approves a smaller percentage. No test plot shall be less than one (1) acre. The test plot must be harvested independently of the surrounding area or, if harvested at the same time, records must be maintained by the permittee that provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetative cover equal to the approved success standard as identified in section 59(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) With respect to yield estimates from clippings, the vegetation growing in one (1) yard squares shall be randomly located in the area under evaluation, clipped, adequately cured under acceptable agronomic practices, and weighed to determine the production from living plants. The vegetation shall be clipped to leave at least one (1) node on the stem to provide for regeneration of foliage. If more than one (1) cutting is necessary to prove the production of the area under evaluation, all additional cuttings must come from the same selected squares unless the entire field is mowed. New squares may be randomly located each year. The production of the area under evaluation (expressed as tons per acre) shall be extrapolated from the clippings obtained from each individual square. For the purposes of section 61 of this rule, the extrapolated production from each square shall be considered an individual observation. The minimum number of observations for the area under evaluation and methods for analysis shall be determined under section 61 of this rule.

(d) The following methods may be used to evaluate the production of living plants on cropland for crops other than hay:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be harvested and the yield obtained. Each yield shall be adjusted for moisture content and certified as to accuracy. Each yield shall be documented by presenting weigh tickets from a grain elevator or by other means acceptable to the director.

(2) With respect to a test plot (as defined under subsection (c)(2)), the director shall determine whether a test plot is representative of the evaluated area. The yield shall be adjusted for moisture content. Test plots collectively shall be at least ten percent (10%) of the area to be represented, unless the director approves a smaller area, but not less than one (1) acre. The

test plot must be harvested independently of the surrounding area or, if harvested at the same time, records must be maintained by the permittee which provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetation or must be used for crop production as provided in the plan of reclamation. The portion in permanent vegetation must have a ground cover equal to the approved success standard as identified in section 59(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) Yield estimates for corn and soybean grain counts shall be conducted under methods used by one (1) of the following:

(A) Purdue University.

(B) University of Illinois.

(C) Another institution approved by the director.

(e) This method may be used to evaluate stocking or planting on an area developed as fish and wildlife habitat, recreation, forest, or shelter belt. Each acceptable tree, shrub, and half-shrub shall be counted that is located within a circle formed by a twenty (20) foot radius centered on a randomly selected point. Each area counted is an individual observation for purposes of section 61 of this rule. The sufficiency of the number of observations shall be determined and the statistical analysis of the results shall be performed under section 61 of this rule. A tree, shrub, or half-shrub is counted if the species:

(1) is designated in the approved reclamation plan;

(2) is alive and healthy; and

(3) has been in place for at least two (2) growing seasons (with at least eighty percent (80%) of the species counted having been in place for at least three (3) growing seasons).

(Natural Resources Commission; 312 IAC 25-6-60; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3539, eff Dec 1, 2001)

312 IAC 25-6-61 Revegetation; statistical methodology

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 61. (a) The methods set forth in this section are used to evaluate the success of revegetation pursuant to section 59 of this rule using the sampling techniques under section 60 of this rule.

(b) The minimum number of observations for the area under evaluation shall be determined as provided under this subsection as follows:

(1) Except as provided in subdivisions (2) through (3), the following table is used to determine the required minimum number of observations:

Size of Area Under Evaluation (In Acres)	Crop	Minimum Number of Observations
	Corn	
0–39		8
40–279		12
280–639		16
640 or more		28
	Soybeans	
0–39		10
40–279		12
280–639		16
640 or more		26
	Wheat and Oats	
0–39		6
40–279		8
280–639		10
640 or more		14
	Sorghum	
0–39		10
40–279		16

280–639	28
640 or more	40
Mixed Hay	
0–39	5
40–279	10
280–639	20
640 or more	20 + 1 additional sample for each 35 acres in excess of 640 acres

(2) If any two (2) observations vary by more than fifteen percent (15%), the director may increase the minimum number of observations required by the table in subdivision (1). If additional samples are required, the formula in subsection (e) shall be used to determine that the number of observations evaluated is sufficient.

(3) A statistical analysis of the result obtained from the area under evaluation shall be performed using the method from subsection (c) or (d). If there are apparent discrepancies between the submitted yield derived from random sampling and yield estimates derived by the director, the operator may be required to harvest specific fields in their entirety.

(c) Sampling results shall be analyzed and the following statistical parameters determined:

(1) Sample mean (average):

$$\overline{X} = \frac{\Sigma X_i}{N}$$

Where: $\sum X_i$ = The sum of the individual observation values.

N = The number of observations.

(2) Mean deviation squared:

$$M = \Sigma \left(X_i - \overline{X}\right)^2$$

(3) Degree of freedom:

$$d = N - 1$$

(4) Sample standard deviation:

$$s = \sqrt{M \div N}$$

(5) t-value:

$$t = \frac{T - \overline{X}}{s \div \sqrt{d}}$$

Where: T = Desired target yield.

The calculated t-value is compared with the value associated with the appropriate degree of freedom (d) in the following table to determine if the standard has been met. The calculated t-value must be less than or equal to the t-value derived from the table to demonstrate that the actual yield has achieved the standard with a ninety percent (90%) or greater statistical confidence.

Degree of Freedom	t-value
1	3.078
2	1.886
3	1.638
4	1.533
5	1.476
6	1.440
7	1.415
8	1.397
9	1.383
10	1.372
11	1.363

12	1.356
13	1.350
14	1.345
15	1.341
16	1.337
17	1.333
18	1.330
19	1.328
20	1.325
21	1.323
22	1.321
23	1.319
24	1.318
25	1.316
26	1.315
27	1.314
28	1.313
29	1.311
30	1.310
40	1.303
60	1.296
120	1.289
∞	1.282

(d) Other statistical methods may be approved by the director.

(e) To determine if the number of samples is sufficient, the following formula will be used:

Number of samples required:

$$\left(\frac{16.4 \times s}{\overline{X}}\right)^2$$

Where: s = Sample standard deviation.

$\overline{X}$ = Mean.

The formula set forth in this subsection prescribes an interactive method in which the number of required samples is dependent upon the variation between the samples. Once the minimum number of samples is obtained, the appropriate information is substituted into this formula to determine if a sufficient number of samples were evaluated given the variation in the data. The collection of additional random samples, together with reapplication of the formula may, depending upon the overall consistency in observations, change the required number of samples as data collection progresses. In general, fewer samples are required if there is greater consistency among samples. *(Natural Resources Commission; 312 IAC 25-6-61; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3540, eff Dec 1, 2001)*

312 IAC 25-6-62 Cessation of operations; temporary

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 62. (a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his or her obligation to comply with any provision of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty (30) days or more, or as soon as it is known that a temporary cessation will extend beyond thirty (30) days, persons who conduct surface mining activities shall submit to the director a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres that have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas that have been accomplished, and identification of the backfilling, regrading, revegetation, environmental

monitoring, and water treatment activities that will continue during the temporary cessation. *(Natural Resources Commission; 312 IAC 25-6-62; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3542, eff Dec 1, 2001)*

312 IAC 25-6-63 Cessation of operations; permanent

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 63. (a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas in accordance with this article and the permit approved by the director.

(b) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the director as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed. *(Natural Resources Commission; 312 IAC 25-6-63; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3542, eff Dec 1, 2001)*

312 IAC 25-6-64 Postmining land use

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 64. (a) All affected areas shall be restored in a timely manner to:

(1) conditions that are capable of supporting the uses that they were capable of supporting before any mining; or

(2) higher or better uses achievable under criteria and procedures of this section.

(b) The premining uses of land to which the postmining land use is compared shall be those uses that the land previously supported, if the land had not been previously mined and had been properly managed. Determinations concerning land use may also consider the following:

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Prior to the release of lands from the permit area in accordance with 312 IAC 25-5-16 the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses shall be approved by the director after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

(1) The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, Indiana, or federal (for federally controlled lands) land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall have been submitted to the director within sixty (60) days of notice by the director and before surface mining activities begin. Any required approval, including any necessary zoning or other changes required for the land use by local, Indiana, or federal (for federally controlled lands) land management agencies, is obtained prior to bond release.

(2) Specific plans are prepared and submitted to the director that show the feasibility of the postmining land use that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The director may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts surface mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under 312 IAC 25-4-48. The letters shall be submitted to the director before the mining activities begin.

(4) Specific and feasible plans are submitted to the director that show that financing, attainment, and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land uses are designed under the general supervision of a registered professional engineer, or other appropriate professionals, who will ensure that the plans conform to applicable accepted standards for adequate land stability,

drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the director and appropriate Indiana and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan before surface mining activities begin.

(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance, such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, Indiana, and local laws, are reviewed by the director to ensure the following:

(A) There is sufficient water available and committed to maintain crop production.

(B) Topsoil quality and depth are sufficient to support the proposed use.

(10) Air and water quality resulting from the alternative postmining land use will not be impacted in a way that will have a greater adverse effect upon the land within the proposed permit area and adjacent areas than if the alternative postmining land use was not approved.

(Natural Resources Commission; 312 IAC 25-6-64; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3542, eff Dec 1, 2001)

312 IAC 25-6-65 Surface mining; roads

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 65. (a) Each road, as defined in 312 IAC 25-1-126, shall be classified as either a primary road or an ancillary road as follows:

(1) A primary road is any road that is:

(A) used for transporting coal or spoil;

(B) frequently used for access or other purposes for a period in excess of six (6) months; or

(C) to be retained for an approved postmining land use.

(2) An ancillary road is any road not classified as a primary road.

(b) Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to accomplish each of the following:

(1) Control or prevent erosion.

(2) Control or prevent siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces by measures, such as the following:

(A) Vegetating.

(B) Watering.

(C) Using chemical or other dust suppressants.

(D) Otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

(3) Control or prevent damage to fish, wildlife, or their habitat and related environmental values.

(4) Control or prevent additional contributions of suspended solids to stream flow or run-off outside the permit area.

(5) Neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters.

(6) Refrain from seriously altering the normal flow of water in streambeds or drainage channels.

(7) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of:

(A) the National Park System;

(B) the National Wildlife Refuge System;

(C) the National System of Trails;

(D) the National Wilderness Preservation System;

(E) the Wild and Scenic Rivers System, including designated study rivers; and

(F) the National Recreation Areas;

as designated by act of Congress.

(8) Use nonacid-forming and nontoxic-forming substances in road surfacing.

(c) To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for each of the following in accordance with current, prudent engineering practices and any necessary design criteria established by the director:

(1) Grade.

(2) Width.

(3) Surface materials.

(4) Surface drainage control.

(5) Culvert placement.

(6) Culvert size.

(d) Roads shall be located as follows:

(1) No part of any road shall be located in the channel of an intermittent stream that drains a watershed of at least one (1) square mile or perennial stream unless specifically approved by the director in accordance with applicable sections 13 through 19 and 28 of this rule.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) Roads shall be maintained as follows:

(1) To meet the performance standards of this rule and any additional criteria specified by the director.

(2) Damages caused by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) All roads, insofar as possible, should be located on ridges or on the available flatter slopes to minimize erosion.

(g) Acid-forming and toxic-forming materials encountered in construction of roads approved as a postmining land use shall be handled in accordance with sections 19 and 50 of this rule.

(h) A road not to be retained under an approved postmining land use shall be reclaimed, as soon as practicable after it is no longer needed for mining and reclamation operations, in accordance with the approved reclamation plan, including the following conditions:

(1) Closing the road to traffic.

(2) Removing all bridges and culverts unless approved as part of the postmining land use.

(3) Removing or otherwise disposing of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain.

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface run-off and erosion.

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with sections 11 and 54 through 61 of this rule.

(Natural Resources Commission; 312 IAC 25-6-65; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3543, eff Dec 1, 2001)

312 IAC 25-6-66 Surface mining; primary roads Version a

Authority: IC 14-34-2-1

Affected: IC 14-34

NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 66. Primary roads shall meet the requirements of section 65 of this rule and the following:

(1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) Each primary road embankment shall have a minimum static safety factor of one and three-tenths (1.3) and be designed

in compliance with the following design standards:

(A) The embankment foundation area shall be cleared of all organic material, and the entire foundation surface shall be scarified.

(B) If the natural slope of the foundation as measured at right angles to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(C) The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

(D) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

(E) The moisture content of the fill material shall be sufficient to secure proper compaction.

(F) The side slopes of the embankment shall be no steeper than 2h:1v.

(G) Maximum fill height shall be twenty-five (25) feet as measured from natural ground at the downstream toe to the top of the embankment.

(H) Embankments shall have a minimum top width of (h + 35)/5, where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment, and shall be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of perennial or intermittent streams that drain a watershed of at least one (1) square mile by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed, or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:

(i) Bridges.

(ii) Ditches.

(iii) Cross drains.

(iv) Ditch relief drains.

(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:

(i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

(ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(iii) Culverts shall be installed and maintained to sustain the following:

(AA) The vertical soil pressure.

(BB) The passive resistance of the foundation.

(CC) The weight of vehicles using the road.

(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with applicable provisions under sections 13 through 19 and 28 of this rule.

(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

(5) Primary roads shall be surfaced with nontoxic material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Natural Resources Commission; 312 IAC 25-6-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3544, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, eff Jan 1, 2005)

312 IAC 25-6-66 Surface mining; primary roads Version b

Authority: IC 14-10-2-4; IC 14-34-2-1

Affected: IC 14-34

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 66. Primary roads shall meet the requirements of section 65 of this rule and the following:

(1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) Each primary road embankment shall have a minimum static safety factor of one and three-tenths (1.3) or be designed in compliance with the following design standards:

(A) The:

(i) embankment foundation area shall be cleared of all organic material; and

(ii) entire foundation surface shall be scarified.

(B) If the natural slope of the foundation as measured at right angles to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(C) The embankment fill material shall be free of the following:

(i) Sod.

(ii) Large roots.

(iii) Other large vegetative matter.

(D) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

(E) The moisture content of the fill material shall be sufficient to secure proper compaction.

(F) The side slopes of the embankment shall be no steeper than 2h:1v.

(G) Maximum fill height shall be twenty-five (25) feet as measured from natural ground at the downstream toe to the top of the embankment.

(H) Embankments shall:

(i) have a minimum top width of (h + 35)/5, where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment; and

(ii) be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of perennial or intermittent streams that drain a watershed of at least one (1) square mile by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed, or reconstructed, and maintained to have adequate drainage control using structures such as, but not limited to, the following:

(i) Bridges.

(ii) Ditches.

(iii) Cross drains.

(iv) Ditch relief drains.

(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event or greater event as specified by the director as follows:

(i) Drainage pipes and culverts shall be installed as designed and maintained:

(AA) in a free and operating condition; and

(BB) to prevent or control erosion at inlets and outlets.

(ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface

and embankment.

(iii) Culverts shall be installed and maintained to sustain the following:

(AA) The vertical soil pressure.

(BB) The passive resistance of the foundation.

(CC) The weight of vehicles using the road.

(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with applicable provisions under sections 13 through 19 and 28 of this rule.

(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

(5) Primary roads shall be surfaced with nontoxic material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Natural Resources Commission; 312 IAC 25-6-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3544, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, eff Jan 1, 2005; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site)

312 IAC 25-6-67 Surface mining; other transportation facilities

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 67. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, maintained, and the area restored to do the following:

(1) Prevent, to the extent possible, using the best technology currently available, the following:

(A) Damage to fish, wildlife, and related environmental values.

(B) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.

(2) Control and minimize diminution or degradation of water quality and quantity.

(3) Control and minimize erosion and siltation.

(4) Control and minimize air pollution.

(5) Prevent damage to public or private property.

(Natural Resources Commission; 312 IAC 25-6-67; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3545, eff Dec 1, 2001)

312 IAC 25-6-68 Support facilities and utility installations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 68. (a) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at or near the mine site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, shed, shops, and other buildings shall be designed, constructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner that prevents, to the extent possible using the best technology currently available, the following:

(1) Damage to fish, wildlife, and related environmental values.

(2) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.

(b) All surface mining activities shall be conducted in a manner that minimizes damage, destruction, or disruption of services provided by:

(1) oil, gas, and water wells;

(2) oil, gas, and coal slurry pipelines;
(3) railroads;
(4) electric and telephone lines; and
(5) water and sewage lines;
that pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the director. *(Natural Resources Commission; 312 IAC 25-6-68; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3545, eff Dec 1, 2001)*

312 IAC 25-6-69 Surveyor corner markers; replacement
Authority: IC 14-34-2-1
Affected: IC 14-34-10; IC 36-2-12-13

Sec. 69. Any person who conducts surface coal mining activities shall, prior to release of any portion of the applicable performance bond, ensure that all surveyor corner markers disturbed by surface mining activities are replaced to the same location as found prior to the surface disturbance. *(Natural Resources Commission; 312 IAC 25-6-69; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001)*

312 IAC 25-6-70 Underground mining; applicability
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 70. This section and sections 71 through 132 of this rule apply to all underground mining activities conducted under IC 14-34. *(Natural Resources Commission; 312 IAC 25-6-70; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001)*

312 IAC 25-6-71 Underground mining; signs and markers
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 71. (a) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained for the duration of all operations to which they pertain.
(b) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification number of the current mining and reclamation permit or other authorization to operate. Such signs shall not be removed until after release of all bonds.
(c) The perimeter of the permit area shall be clearly marked before the beginning of underground mining activities.
(d) If surface blasting is conducted incident to underground mining activities, the permittee shall do the following:
(1) Conspicuously display signs reading "Blasting Area" along the edge of any blasting area 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.
(2) Conspicuously flag or post within the blasting area, the immediate vicinity of charged holes.
(3) Place at all entrances to the permit area from public roads or highways conspicuous signs that:
(A) state "Warning! Explosives in Use";
(B) clearly explain the blast warning and all clear signals that are in use; and
(C) explain the marking of blast areas and charged holes within the permit area.
(e) Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under section 75 of this rule, the stockpiled material shall be clearly marked. However, the permittee may remove the markers while reworking or removing the stockpiles.
(f) Buffer zones shall be marked along their boundaries as required under section 91 of this rule. *(Natural Resources Commission; 312 IAC 25-6-71; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106)*

312 IAC 25-6-72 Underground mining; casing and sealing exposed underground openings; general requirements
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 72. Each drilled hole, shaft, well, or other exposed underground opening shall be cased, sealed, or managed to:
(1) prevent acid or toxic water drainage from entering ground or surface waters; and
(2) minimize disturbance to the prevailing hydrologic balance.
Each drill hole or well that is uncovered or exposed by mining activities within the permit area shall be sealed in a manner to prevent exposure by any mining activity. Use of a drilled hole, shaft, or monitoring well as a water well must meet section 87 of this rule. This section does not apply to holes drilled and used for blasting in the area affected by surface operations. *(Natural Resources Commission; 312 IAC 25-6-72; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001)*

312 IAC 25-6-73 Underground mining; casing and sealing exposed underground openings; temporary
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 73. (a) Each mine entry that is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.
(b) Each drilled hole, shaft, well, and other exposed underground opening identified in the approved permit application for use:
(1) to return underground development waste, coal processing waste, or water to underground workings; or
(2) to be used to monitor ground water conditions;
shall be temporarily sealed until actual use and shall be protected during use by barricades, fences, or other protective devices. *(Natural Resources Commission; 312 IAC 25-6-73; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3547, eff Dec 1, 2001)*

312 IAC 25-6-74 Underground mining; casing and sealing exposed underground openings; permanent
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 74. Each drilled hole, shaft, well, drift, adit, tunnel, entryway, or other opening to the surface from underground when no longer in use, unless approved for transfer as a water well under section 87 of this rule, shall be capped, sealed, backfilled, or otherwise properly managed in accordance with sections 72 and 85 of this rule to prevent acid or other toxic surface drainage from entering ground and surface water. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery. *(Natural Resources Commission; 312 IAC 25-6-74; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3547, eff Dec 1, 2001)*

312 IAC 25-6-75 Underground mining; topsoil and subsoil
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 75. (a) All topsoil shall be removed as a separate layer from the area to be disturbed and segregated.
(1) Where the topsoil is of insufficient quantity or of poor quality to sustain vegetation, the material approved by the director as a topsoil substitute or supplement in accordance with subsection (c) shall be removed separately from the area to be disturbed and segregated.
(2) If the topsoil is less than six (6) inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil to a total depth of six (6) inches and treat the mixture as topsoil.
(3) Topsoil need not be removed:
(A) at sites disturbed only by power poles, signs, fence posts, electrical substations, transformers and switchboxes, explosives magazines, temporary building on skids, topsoil stockpiles, culvert installations, cable routes, cable storage areas, powerline cable suspension towers or "horses", pumps, pump hoses, and pipelines; and
(B) with the director's approval, for minor disturbances that will not permanently destroy the existing vegetation and will not cause erosion.
(b) All material to be removed under this rule shall be removed after the vegetative cover that would interfere with its removal

and use is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other disturbance, except those disturbances described in subsection (a), takes place.

(c) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the permittee demonstrates to the director in the permit application that the resulting soil medium is equal to or more suitable for sustaining vegetation than the existing topsoil.

(d) Storage requirements are as follows:

(1) Materials removed under subsections (a) and (f) shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas within the permit area, or within other permit areas of the same permittee within the same mining operation.

(2) Stockpiled materials shall:

(A) be selectively placed on stable sites within the permit area or within other permit areas of the same permittee within the same mining operation;

(B) be protected from contamination and unnecessary compaction that would interfere with revegetation;

(C) be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing nonnoxious vegetative cover, or through other measures approved by the director in the permit application; and

(D) not be moved until required for redistribution unless approved by the director in the permit application.

(3) Where long term surface disturbances will result from facilities, such as support facilities and preparation plants and where stockpiling of materials removed under subsection (a) would be detrimental to the quality or quantity of those materials, the director may, in the permit application, approve the temporary distribution of the soil materials so removed to an approved site within the permit area or another permit area of the same permittee to enhance the current use of that site until needed for later reclamation, provided that:

(A) such action will not permanently diminish the capability of the topsoil of the host site; and

(B) the material will be retained in a condition more suitable for redistribution than if stockpiled.

(e) Redistribution requirements are as follows:

(1) Topsoil materials removed under subsections (a) and (f) shall be redistributed in a manner that:

(A) achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(B) prevents excess compaction of the materials; and

(C) protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under subsection (a) the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished revegetation, such treatment may be conducted after such material is replaced.

(3) Redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads shall not be required if the permittee demonstrates that:

(A) placement of such material on the embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(B) the embankments will be otherwise stable or stabilized.

(4) Nutrients and soil amendments shall be applied, in amounts determined by soil tests using standard agronomic laboratory procedures, to the initially redistributed material when necessary to establish the vegetative cover.

(f) The director may require that portions of the subsoil be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of subsections (d) and (e) if the director finds that such subsoil layers are necessary to comply with the revegetation requirements of this rule. *(Natural Resources Commission; 312 IAC 25-6-75; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3547, eff Dec 1, 2001)*

312 IAC 25-6-76 Underground mining; hydrologic balance; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 76. (a) Underground mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, in order to prevent long term adverse changes in that balance that could result from those activities.

(b) Changes in water quality and quantity, in the depth of ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit is not adversely affected.

(c) In no case shall federal and Indiana water quality statutes, regulations, rules, standards, or effluent limitations be violated.

(d) Operations shall be conducted to minimize water pollution. If necessary, treatment methods shall be used to control water pollution.

(e) Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow or drainage shall be used in preference to the use of water treatment facilities.

(f) Acceptable practices to control and minimize water pollution include the following:

(1) Stabilizing disturbed areas through land shaping.

(2) Diverting run-off.

(3) Achieving quickly germinating and growing stands of temporary vegetation.

(4) Regulating channel velocity of water.

(5) Lining drainage channels with rock or vegetation.

(6) Mulching.

(7) Selectively placing and sealing acid-forming and toxic-forming materials.

(8) Designing mines to prevent gravity drainage of acid waters.

(9) Sealing.

(10) Controlling subsidence.

(11) Preventing acid mine drainage.

(g) If the practices listed in subsection (f) are not adequate to meet the requirements of sections 70 through 75 of this rule, this section, and sections 77 through 132 of this rule, the person who conducts underground mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under sections 70 through 75 of this rule, this section, and sections 77 through 132 of this rule. *(Natural Resources Commission; 312 IAC 25-6-76; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3548, eff Dec 1, 2001)*

312 IAC 25-6-76.5 Underground mining; hydrologic balance; application of ground water quality standards at underground coal mining and reclamation operations permitted under IC 14-34 on which coal extraction, coal processing, coal processing waste disposal, or underground development waste and spoil deposition occurs after the effective date of this section, or on which disposal activity subject to IC 13-19-3-3 has occurred and the area is not fully released from the performance bond required by IC 14-34-6

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 76.5. (a) Ground water is classified under 327 IAC 2-11 to determine appropriate criteria that shall be applied to ground water.

(b) Underground coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2-11.

(c) Underground coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25-4-74 and 312 IAC 25-6-88 govern water replacement.

(d) The ground water management zone described in 327 IAC 2-11-9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal mine processing waste disposal site.

(B) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site.

(C) An underground development waste and spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in

subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

(Natural Resources Commission; 312 IAC 25-6-76.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3865, eff Feb 1, 2004)

312 IAC 25-6-77 Underground mining; hydrologic balance; water quality standards and effluent limitations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 77. (a) All surface drainage from the disturbed area shall be controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in section 80 of this rule before leaving the permit area. Any discharge of water from underground workings to surface waters that does not meet the effluent limitations of this section shall also be controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in section 80(b) of this rule before leaving the permit area.

(b) Siltation structures and other approved alternate techniques as provided in section 80 of this rule for surface drainage from the disturbed area shall be operated and maintained to achieve applicable federal and state effluent limitations. Siltation structures and treatment facilities for discharges from underground workings shall also be operated and maintained to achieve applicable federal and state effluent limitations.

(c) For the purposes of this section only, "disturbed area" shall not include those areas affected by surface operations in which only diversion ditches, siltation structures, or roads are installed in accordance with sections 70 through 76 of this rule, this section, and sections 78 through 132 of this rule.

(d) Siltation structures required by this section shall be constructed in accordance with section 81 of this rule, in appropriate locations before beginning any underground mining activities in the drainage area to be affected.

(e) Discharges of water from areas disturbed by underground mining activities shall be made in compliance with each of the following:

(1) All applicable state and federal water quality laws and regulations.

(2) Effluent limitations for coal mining promulgated by the United States Environmental Protection Agency as set forth in 40 CFR 434.

(Natural Resources Commission; 312 IAC 25-6-77; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3549, eff Dec 1, 2001)

312 IAC 25-6-78 Underground mining; hydrologic balance; diversions; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 78. (a) Flow may be diverted around disturbed areas through temporary or permanent diversions if approved by the director for:

(1) mined areas abandoned before May 3, 1978;
(2) reclaimed areas that meet the criteria of section 81(e) of this rule for siltation structure removal;
(3) undisturbed areas; or
(4) active underground coal mining operations after passing through a siltation structure and meeting the applicable effluent limitations.

(b) Diversions shall be designed to:
(1) minimize adverse impacts to the hydrologic balance within the permit and adjacent areas;
(2) prevent material damage to public or private property; and
(3) assure the safety of the public.

(c) Diversions shall not be used to divert water into underground mines without the approval of the director under section 89 of this rule.

(d) A diversion and its appurtenant structures shall be designed, located, constructed, maintained, and used to:
(1) be stable;
(2) provide protection against flooding and resultant damage to life and property;
(3) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
(4) comply with all applicable local, state, and federal laws and regulations.

(e) A temporary diversion shall be removed promptly when no longer needed to achieve the purpose for which the temporary diversion was authorized. The land disturbed by the removal process shall be restored in accordance with the approved reclamation plan and sections 70 through 77 of this rule, this section, and sections 79 through 132 of this rule.

(f) Before any diversion is removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement does not relieve the permittee from maintaining water treatment facilities as otherwise required.

(g) A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed to restore or approximate the premining characteristics of the original stream channel, including the natural riparian vegetation, to promote the recovery and the enhancement of the aquatic habitat.

(h) Consideration during design shall be given to:
(1) the anticipated flow velocity;
(2) the erosion characteristics of the channel and side slopes;
(3) the need for adequate freeboard above the design water surface elevation; and
(4) the need for channel lining or energy dissipaters.

(Natural Resources Commission; 312 IAC 25-6-78; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3549, eff Dec 1, 2001)

312 IAC 25-6-79 Underground mining; hydrologic balance; diversions of perennial streams, intermittent streams with a watershed greater than one square mile, miscellaneous flows; stream channel diversions; supplemental requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 79. (a) This section provides requirements that are supplemental to those contained in section 78 of this rule for:
(1) diversions of perennial streams;
(2) intermittent streams with a watershed greater than one (1) square mile; and
(3) miscellaneous flows.

Subsection (b) governs perennial streams and intermittent streams with a watershed greater than one (1) square mile. Subsection (c) governs miscellaneous flows.

(b) Requirements for temporary and permanent diversions are as follows:
(1) Diversion of perennial streams and intermittent streams with a watershed greater than one (1) square mile may be approved by the director after making a finding related to stream buffer zones that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.
(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of section 78(d)(2) of this rule shall be met when the temporary and permanent diversions for intermittent streams having a watershed greater than one (1) square mile and perennial streams are designed so that the combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a ten (10) year, six (6) hour precipitation event for a temporary diversion and a one hundred (100) year, six (6) hour precipitation event for a permanent diversion.

(4) All stream channel diversions subject to this subsection shall be designed under the supervision of a qualified registered professional engineer in accordance with good engineering practices and the requirements of this section and shall be certified after construction by the qualified registered professional engineer as having been constructed in accordance with the approved plans.

(c) Requirements for miscellaneous flows are as follows:

(1) Miscellaneous flows, which consist of all flows except those specified in subsection (b), may be diverted around disturbed areas if required and approved by the director. Miscellaneous flows include ground water discharges, overland flow, ephemeral streams, and intermittent streams having a watershed not greater than one (1) square mile.

(2) The design, location, construction, maintenance, and removal of diversion of miscellaneous flows shall meet all the performance standards set forth in section 78 of this rule.

(3) The requirements of section 78(d)(2) of this rule shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that a combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a two (2) year, six (6) hour precipitation event for a temporary diversion and a ten (10) year, six (6) hour precipitation event for a permanent diversion.

(Natural Resources Commission; 312 IAC 25-6-79; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3550, eff Dec 1, 2001)

312 IAC 25-6-80 Underground mining; hydrologic balance; sediment control measures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 80. (a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to do the following:

(1) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or to run-off outside the permit area.

(2) Meet the more stringent of applicable Indiana or federal effluent limitations.

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to, the following:

(1) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in section 115(b) of this rule.

(2) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off in accordance with requirements of section 112 of this rule.

(3) Retaining sediment within disturbed areas.

(4) Diverting run-off away from disturbed areas.

(5) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion.

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment.

(7) Treating with chemicals.

(8) Treating mine drainage in underground sumps.

(Natural Resources Commission; 312 IAC 25-6-80; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3551, eff Dec 1, 2001)

312 IAC 25-6-81 Underground mining; hydrologic balance; siltation structures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 81. (a) Siltation structures shall be constructed according to the following:
(1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.
(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section 77 of this rule.
(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.
(4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 84 of this rule.
(5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 111 through 122 of this rule so that the following requirements are met:
(A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.
(B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.
(C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.
In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.
(6) When the siltation structure is removed, the land on which it was located shall be regraded and revegetated in accordance with the reclamation plan and sections 115 through 122 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 84 and 90 of this rule.
(7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.
(b) Siltation structures, where utilized individually or in series, shall be as follows:
(1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.
(2) Designed, constructed, and maintained to achieve each of the following:
(A) Provide adequate sediment storage volume.
(B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.
(C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.
(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).
(E) Minimize, to the extent possible, short circuiting.
(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.
(G) Ensure against excessive settlement.
(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.
(I) Be compacted properly.
(J) For siltation structures with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one (1) foot of freeboard above the design peak discharge elevation which is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.
(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 77 of this rule.
(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:
(1) The director may approve a single open channel spillway that is:
(A) of nonerodible construction and designed to carry sustained flows; or
(B) earth-lined or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected.
(2) Except as specified in subdivision (3), the required design precipitation event for a siltation structure meeting the spillway

requirements of this section is as follows:

(A) For a siltation structure meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(B) For a siltation structure meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(C) For a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a siltation structure that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a siltation structure shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) in the case of a siltation structure meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) in the case of a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).

(Natural Resources Commission; 312 IAC 25-6-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3551, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2463, eff Jan 1, 2005)

312 IAC 25-6-82 Underground mining; hydrologic balance; discharge structures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 82. Discharge from siltation structures, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled by energy dissipators, riprap channels, and other devices, where necessary, to do the following:

(1) Reduce erosion.

(2) Prevent deepening or enlargement of stream channels.

(3) Minimize disturbance of the hydrologic balance.

Discharge structures shall be designed according to standard engineering design procedures. *(Natural Resources Commission; 312 IAC 25-6-82; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3552, eff Dec 1, 2001)*

312 IAC 25-6-83 Underground mining; hydrologic balance; acid-forming and toxic-forming materials

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 83. Drainage from acid-forming and toxic-forming underground development waste and spoil, if any, into ground and surface water shall be avoided by doing the following:

(1) Identifying, burying, and treating, where necessary, waste and spoil that, in the judgment of the director, may be detrimental to vegetation, or may adversely affect water quality, if not treated or buried.

(2) Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with section 112

of this rule.

(3) Burying or treating all acid-forming or toxic-forming spoil within a reasonable period of time. If the director determines that such spoil is detrimental to the offsite hydrologic balance, the operator shall bury or treat the acid-forming or toxic-forming spoil within thirty (30) days.

(Natural Resources Commission; 312 IAC 25-6-83; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3553, eff Dec 1, 2001)

312 IAC 25-6-84 Underground mining; hydrologic balance; permanent and temporary impoundments

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 84. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:

(1) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this rule.

(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-87 as designed to meet the requirement of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Impoundments must meet the following criteria for stability:

(A) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a) to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. 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) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where

sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

(i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(iii) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(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.

(B) The qualified registered professional engineer shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed or maintained, or both, as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

(i) Any appearance of instability, structural weakness, or other hazardous condition.

(ii) Depth and elevation of any impounded waters.

(iii) Existing storage capacity.

(iv) Any existing or required monitoring procedures and instrumentation.

(v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments subject to 30 CFR 77.216 or meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. 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 clause, following approval by the director:

(i) Impoundments that are completely incised.

(ii) Water impounding structures that impound water to a design elevation no more 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; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state of Indiana, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the

structure or in the structure itself.

(iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

(AA) Sewage lagoons.

(BB) Landscaping ponds.

(CC) Pools or wetlands in replaced stream channels.

(DD) Existing impoundments not yet used to facilitate mining.

(EE) Ephemeral waterbodies.

(FF) Active mining pits.

(GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundment will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundment will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

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

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33⅓%) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to place topsoil on the slope under section 75 of this rule and to revegetate the slope under sections 115 through 122 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of an underground coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

(1) meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event or greater event as specified by the director; or

(2) not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments, and surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of sections 115 through 122 of this rule after the embankment is completed. The active, upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of sections 115 through 122 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be

submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. *(Natural Resources Commission; 312 IAC 25-6-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3553, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2465, eff Jan 1, 2005)*

312 IAC 25-6-85 Underground mining; hydrologic balance; underground mine entry and access discharges

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 85. (a) Surface entries and access to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

(b) Gravity discharge of water from an underground mine, other than a drift mine subject to subsection (c), may be allowed by the director if either of the following is demonstrated:

(1) The discharge:

(A) without treatment, satisfies the water effluent limitations of section 77 of this rule and all applicable Indiana and federal water quality standards; and

(B) will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected.

(2) The discharge:

(A) is conveyed to a treatment facility in the permit area in accordance with section 77 of this rule;

(B) all water from the underground mine discharged from the treatment facility meets the effluent limitations of section 77 of this rule and all other applicable Indiana and federal statutes and regulations; and

(C) consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

(c) Notwithstanding anything to the contrary in subsections (a) and (b), for a drift mine first used after the implementation of this program and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine unless another location is approved by the director. *(Natural Resources Commission; 312 IAC 25-6-85; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3555, eff Dec 1, 2001)*

312 IAC 25-6-86 Underground mining; hydrologic balance; surface and ground water monitoring

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 86. (a) This subsection establishes standards for maintaining the hydrologic balance of ground water as follows:

(1) Ground water levels, and the quality of ground water, shall be monitored through bond release in a manner approved by the director according to the requirements of 312 IAC 25-4-72 to determine the effects of mining activities on the recharge capacity of reclaimed lands and the quantity and quality of water in ground water systems in the permit and adjacent areas.

(2) When mining activities may affect the ground water systems that serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, ground water levels and ground water quality shall be periodically monitored according to the requirements of 312 IAC 25-4-72. Monitoring shall include measurements from a sufficient number of wells and the mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The director may require additional tests and shall require the reporting of the results of these tests to demonstrate compliance with section 85 of this rule and this section.

(4) If the analysis of a ground water sample indicates noncompliance with a permit condition, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(5) If the director determines that the permit area and adjacent area do not contain significant ground water resources, the director shall waive or otherwise modify the monitoring requirements of this subsection.

(b) This subsection establishes standards for maintaining the hydrologic balance of surface water as follows:

(1) Surface water monitoring, reporting, and record keeping shall be conducted through bond release, in accordance with the provisions of 312 IAC 25-4-73 and as specified in the effective National Pollutant Discharge Elimination System (NPDES) permit.
(2) Copies of the monitoring reports and any noncompliance notifications shall be provided to the director concurrently with the submissions to the NPDES permit authority.
(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.
(4) If the analysis of a surface water sample indicates noncompliance with any permit terms or conditions, the permittee must do the following:
(A) Promptly notify the director.
(B) Immediately take any action required by the reclamation plan or by a permit condition.
(5) In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 312 IAC 25-4-85(b) and the following:
(A) Surface water quality shall be protected by handling earth materials, ground water discharges, and run-off in a manner that accomplishes the following:
(i) Minimizes the formation of acid or toxic drainage.
(ii) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area.
(iii) Otherwise prevents water pollution.
(B) If drainage control, restabilization, and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and section 77 of this rule, the operator shall use and maintain the necessary water treatment facilities or water quality controls.
(6) Surface water quality and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 312 IAC 25-4-85(b).
(c) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. *(Natural Resources Commission; 312 IAC 25-6-86; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3556, eff Dec 1, 2001)*

312 IAC 25-6-87 Underground mining; hydrologic balance; transfer of wells
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 87. (a) An exploratory or monitoring well may only be transferred by the person who conducts underground mining activities for further use as a permanent water well with the prior approval of the director. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the director for that approval.
(b) Upon an approved transfer of a well, the transferee shall:
(1) assume primary liability for damages to persons or property from the well;
(2) plug the well when necessary, but in no case later than abandonment of the well; and
(3) assume primary responsibility for compliance with sections 72 through 74 of this rule with respect to the well.
(c) Upon an approved transfer of a well, the transferor shall be secondarily liable for compliance with sections 72 through 74 of this rule until release of the bond or other equivalent guarantee required by 312 IAC 25-5 for the area in which the well is located. *(Natural Resources Commission; 312 IAC 25-6-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3557, eff Dec 1, 2001)*

312 IAC 25-6-88 Underground mining; hydrologic balance; water rights and replacement
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 817.41(j)

Sec. 88. The permittee must promptly replace any drinking, domestic, or residential water supply that is contaminated, diminished, or interrupted by underground mining activities if the affected well or spring was in existence before the date the director received the permit application for the activities causing the loss, contamination, or interruption. The baseline hydrologic information

required in 312 IAC 25-4-47 and 312 IAC 25-4-85 and the geologic information concerning baseline hydrologic conditions required in 312 IAC 25-4-30 and 312 IAC 25-4-71 will be used to determine the impact of mining activities upon water supply. Water replacement rights are not determined by this article. *(Natural Resources Commission; 312 IAC 25-6-88; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3557, eff Dec 1, 2001)*

312 IAC 25-6-89 Underground mining; hydrologic balance; discharge of water into underground mine

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 89. Water from the surface or from an underground mine shall not be diverted or otherwise discharged into other underground mine workings unless the person who conducts the underground mining activities demonstrates to the director that this diversion or discharge will:

(1) abate water pollution or otherwise eliminate public hazards resulting from underground mining activities;

(2) be discharged as a controlled flow;

(3) meet the effluent limitations of section 77 of this rule for pH and total suspended solids, except as provided in this subdivision and the director may approve that the limitation on total suspended solids be exceeded for:

(A) coal processing waste;

(B) underground mine development waste;

(C) fly ash from a coal-fired facility;

(D) sludge from an acid mine drainage treatment facility;

(E) flue gas desulfurization sludge; or

(F) inert materials used for stabilizing underground mines.

(4) continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility;

(5) not result in a discharge from an underground mine to surface waters which causes, results in, or contributes to a violation of applicable water quality standards or effluent limitations; and

(6) minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from underground mining activities.

(Natural Resources Commission; 312 IAC 25-6-89; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3557, eff Dec 1, 2001)

312 IAC 25-6-90 Underground mining; hydrologic balance; postmining rehabilitation of siltation structures, diversions, impoundments, and treatment facilities

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 90. Before abandoning a permit area or seeking bond release, the person who conducts the underground mining activities shall ensure that:

(1) all temporary structures are removed and reclaimed; and

(2) all permanent sedimentation ponds, diversions, impoundments, and treatment facilities:

(A) meet the requirements of this article for permanent structures; and

(B) have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments.

The person who conducts the underground mining activities shall renovate such structures, if necessary, to meet the requirements of this article and to conform to the approved reclamation plan. *(Natural Resources Commission; 312 IAC 25-6-90; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001)*

312 IAC 25-6-91 Underground mining; hydrologic balance; stream buffer zones

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 817.57

Sec. 91. (a) No land within one hundred (100) feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities unless the director specifically authorizes underground activities closer to or through such a stream.

The director may authorize such activities only upon finding that:

(1) underground mining activities will not cause or contribute to the violation of applicable state or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) if there will be a temporary or permanent stream-channel diversion, it will comply with sections 78 through 79 of this rule.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in section 6 of this rule. *(Natural Resources Commission; 312 IAC 25-6-91; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001)*

312 IAC 25-6-92 Underground mining; coal recovery

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 92. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized. *(Natural Resources Commission; 312 IAC 25-6-92; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001)*

312 IAC 25-6-93 Underground mining; explosives; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 93. (a) This section and sections 94 through 97 of this rule apply only to surface blasting activities incident to underground mining, including initial rounds of slopes, shafts, and similar activities.

(b) Each permittee must comply with Indiana and federal laws that regulate the use of explosives.

(c) All blasting operations conducted after July 1, 1987, shall be conducted under the direct supervision of a certified blaster.

(d) A permittee must comply with the following blast design requirements:

(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 (not owned by the permittee), public building, school, church, or community or institutional building;

(B) five hundred (500) feet of an active or abandoned underground mine; or

(C) one thousand (1,000) feet of a pipeline.

(2) The blast design may be presented as part of a permit application or at a time, prior to the blast, approved by the director.

(3) The blast design shall contain sketches of the typical 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 the structures to be protected, as well as a discussion of design factors to be used, that protect the public and meet the applicable airblast, ground-vibration, and flyrock standards of section 96 of this rule.

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

(5) The director may require changes to the design submitted if necessary to protect public safety or prevent damage to structures described in subdivision (1).

(e) The certified blaster and at least one (1) other person shall be present at the firing of a blast. The certified blaster shall either physically detonate the charge or give the order to detonate the charge.

(f) Each person responsible for blasting operations at a blast site shall be familiar with the approved blasting plan and site-specific performance standards.

(g) Each person responsible for blasting operations shall possess a valid certification under 312 IAC 9. A certified blaster must make all decisions concerning the following:

(1) Blast hole size, spacing, or depth.

(2) The quantity of explosives in each hole.

(3) The total quantity of explosives to be detonated.

(4) The delay periods to be used.

(Natural Resources Commission; 312 IAC 25-6-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001)

312 IAC 25-6-94 Underground mining; explosives; preblasting survey

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 94. (a) At least thirty (30) days before the initiation of blasting, the permittee shall notify in writing all residents, operators of pipeline, or owners of dwellings or other structures located within one-half (½) mile of the permit area how to request a preblasting survey.

(b) The applicant or permittee shall cause the publication, at least once a week for four (4) consecutive weeks in a local newspaper of general circulation in the county in which the blasting will occur, of a notification that the applicant or permittee will conduct a preblasting survey upon the request by a resident or owner of a manmade dwelling or structure within one (1) mile of any portion of the permit area. A copy of the public notice and publisher's affidavit or other proof of publication shall be filed with the director not later than four (4) weeks after the last date of publication.

(c) On the written request to the director or the permittee by a resident or owner of a dwelling or structure that is located within one (1) mile of any surface blasting activity covered by section 93 of this rule, this section, and sections 96 through 97 of this rule, the permittee shall promptly conduct a survey of the dwelling or structure and promptly submit a report of the survey to the director and to the person requesting the survey. If a structure is renovated or added to subsequent to a survey, upon request by the resident or owner, a survey of the additions or renovations shall be performed by the permittee under this section.

(d) The survey shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of cisterns, wells, other water systems, pipelines, cables, transmission lines, and similar structures warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(e) A written report of the survey shall be prepared and signed by the person who conducts the survey. Copies of the report shall be promptly provided to the person requesting the survey and to the director. If a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program to encourage all dwelling owners to have preblasting surveys, where no request for a preblasting survey has been made of the director or the permittee, the survey need not be submitted to the director. If the person requesting the survey disagrees with the results of the survey, that person may notify in writing both the permittee and the director of the specific areas of disagreement.

(f) All survey requests received by the permittee more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting. A request received less than ten (10) days before the initiation of blasting shall be completed promptly but need not be completed prior to initiation of blasting. *(Natural Resources Commission; 312 IAC 25-6-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001)*

312 IAC 25-6-95 Underground mining; explosives; publication of blasting schedule

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 95. (a) Blasting schedule publication and distribution requirements are as follows:

(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days, before beginning a surface 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 to local governments and public utilities and by mail to each residence within one-half (½) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule pursuant to subdivisions (1) and (2) at least every twelve (12) months.

(b) Blasting schedule contents. The blasting schedule shall contain, at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place.

(2) Days and time periods when explosives are to be detonated.

(3) Methods to be used to control access to the blasting area.

(4) Types and patterns of audible warnings and all-clear signals to be used before and after blasting.

(5) Name, address, and telephone number of the permittee.

(c) Before surface blasting in areas or at times not in a previous blasting schedule, the permittee shall prepare a revised blasting

schedule and shall publish and distribute the revised schedule according to the procedures in subsections (a) and (b). The revised blasting schedule shall be approved by the director before publication and distribution.

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication. *(Natural Resources Commission; 312 IAC 25-6-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001)*

312 IAC 25-6-96 Underground mining; explosives; surface blasting operations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 96. (a) Surface blasting operations shall be conducted at times approved by the director and announced in the blasting schedule. The permittee shall submit the blasting schedule required by section 95 of this rule to the director for approval sixty (60) days prior to the date of publication specified in section 95(a) of this rule.

(b) All blasting shall be conducted between sunrise and sunset unless nighttime blasting is approved by the director upon a showing that the public will be protected from adverse noise and other impacts.

(1) The director may specify more restrictive time periods, based on public requests or other considerations, including the proximity to residential areas.

(2) Unscheduled blasting operations may be conducted only when operator or public health and safety require unscheduled detonation. When a permittee conducts unscheduled blasting operations, the permittee shall do the following:

(A) Notify persons with one-half (½) mile of the blasting site using audible warning signals.

(B) Take sufficient measures to ensure the public will be protected from adverse noise and other impacts.

(C) Document the reason for the unscheduled blasting including why the blast could not be held over to the next day, when the blast was actually conducted the warning signals given, in accordance with section 97 of this rule. The director may require any permittee to submit a report of unscheduled blasts if needed to respond to citizen complaints concerning blasting.

(c) Warning and all-clear signals of different character or pattern that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (½) mile of the permit area shall be notified of the meaning of the signals through the notification required in subsection (a). These instructions shall be clear and communicated in a manner that can reasonably be expected to inform such persons of the meaning of the signals. Each permittee shall maintain signs in accordance with section 71(c) of this rule.

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the blasting area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting until an authorized representative of the permittee has reasonably determined that:

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

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

(e) Airblast requirements are as follows:

(1) Airblast shall be controlled so that it does not exceed the maximum limits specified below at any dwelling, public building, school, church, or community or institutional building unless such structure is owned or leased by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this subsection. The written waiver shall be submitted to the director before blasting commences.

Lower Frequency Limit of Measuring System, Hz (±3 dB)	Maximum Level in dB
0.1 Hz or lower-flat response	134 peak.
2 Hz or lower-flat response	133 peak.
6 Hz or lower-flat response	129 peak.
C-weighted, slow response	105 peak dBC.

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

(3) The permittee may satisfy the provisions of this section by meeting any one of the four (4) specifications in the chart in subdivision (1), provided, however, the one-tenth (0.1) hertz or lower-flat response or C-weighted slow response can only be used if approved by the director.

(4) The director may require airblast measurements of any or all blasts and may specify the location of such measurements. If necessary to prevent damage, the director shall specify lower maximum airblast levels than those of subdivision (1) for use in the vicinity of a specific blasting operation.

(5) The permittee shall conduct periodic monitoring to ensure compliance with the airblast standards of subdivision (1).

(f) Flyrock, including material traveling along the ground, shall not be cast from the blasting site more than one-half (½) the distance to the nearest dwelling or other occupied structure, beyond the boundary of the bonded area, or beyond the area of regulated access required under subsection (d).

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

(h) Requirements for maximum ground vibrations are as follows:

(1) In all blasting operations, except as otherwise authorized in this section, the maximum ground vibration shall not exceed the limits approved by the director. The maximum ground vibration at the location of any dwelling, public building, school, church, or community or institutional building shall be established in accordance with either the maximum peak particle-velocity limits of subdivision (2), the scaled-distance equation of subdivision (3), the blasting-level chart of subdivision (4), or by the director under subdivision (5). All structures in the vicinity of the blasting area, not listed in this subdivision, including, but not limited to, water towers, pipelines, and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the permittee and approved by the director before initiation of blasting. Provided, however, abandoned underground workings that are within the permit boundary and are to be mined through according to approved mining plans are not subject to a ground vibration limitation.

(2) Maximum peak particle velocity requirements as follows:

(A) The maximum ground vibration, measured as peak particle velocity, shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building:

Distance (D) from the blasting site (feet)	Maximum allowable peak particle velocity (Vmax) for ground vibration (inch/second)	Scaled-distance factor (Ds) to be applied without seismic monitoring[1]
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1]Applicable to the scaled distance equation of subdivision (3)(A).

(B) A seismographic record shall be obtained for each blast. The results of the record shall be made a part of the blasting record required by section 97 of this rule. Particle velocity shall be measured in three (3) mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three (3) measurements.

(3) Scaled-distance equation as follows:

(A) A permittee may use the scaled-distance equation:

$$W = (D/Ds)^2$$

to determine the allowable charge-weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring:

Where: W = The maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period.

D = The distance, in feet, from the blasting site to the nearest protected structure.

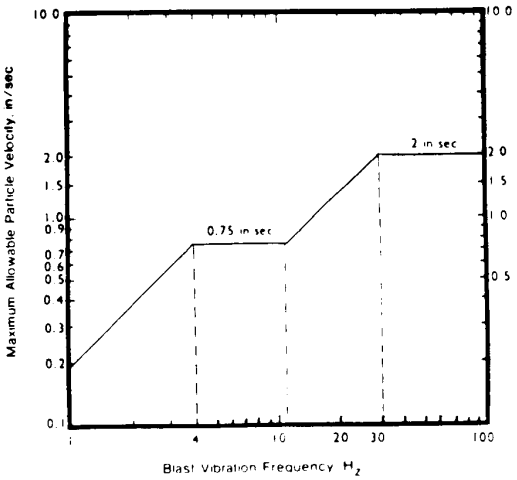
Ds = The scaled-distance factor.

that may initially be approved by the director using the values for scaled-distance factor listed in subdivision (2)(A).

(B) The development of a modified scaled-distance factor may be authorized by the director on receipt of a written request by the permittee, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of subdivision (2)(A) at a ninety-five percent (95%) confidence level.

(4) A permittee may use the ground vibration limits found in the following chart to determine the maximum allowable ground

vibration:



If the chart limits are used, a seismographic record including both particle-velocity and vibration-frequency levels shall be obtained for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the director before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the director beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The director may require a permittee to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(i) The maximum airblast and ground vibration limitations of subsections (e) and (h) shall not apply at the following locations:

(1) At structures owned by the permittee, and not leased to another party.

(2) At structures owned by the permittee, and leased to another party if a written waiver by the lessee is submitted to the director prior to blasting.

(Natural Resources Commission; 312 IAC 25-6-96; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3560, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106)

312 IAC 25-6-97 Underground mining; explosives; records of blasting operations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 97. A record of each blast, including seismograph records when obtained, shall be retained by the permittee for at least three (3) years and shall be made available for inspection by the director and the public on request. The record 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 certified blaster conducting the blast.

(4) Direction and distance, in feet, to the nearest dwelling, school, church, or community or institutional building that is not owned or leased by the permittee.

(5) Weather conditions that may cause possible adverse blasting effects, including temperature, wind direction, and approximate velocity.

(6) Type of material blasted.

(7) Sketches of the blast pattern, including the following:

(A) Number of holes.

(B) Burden.

(C) Spacing.
(D) Decks.
(E) Delay pattern.
(8) Diameter and depth of holes.
(9) Types of explosives used.
(10) Total weight of explosives used per hole.
(11) Maximum weight of explosives detonated within any 8-millisecond period.
(12) Initiation system.
(13) Type and length of stemming.
(14) Mats or other protections used.
(15) Type of delay detonator and delay periods used.
(16) Seismographic and airblast records, when obtained, shall include the following:
(A) Exact location of instrument and the date, time and distance from the blast.
(B) Type of instrument, sensitivity, and calibration signal or certification of annual calibration.
(C) Name of the person and firm taking the seismograph reading.
(D) Name of the person and firm analyzing the seismograph record.
(E) The ground vibration and/or airblast level recorded.
(17) Reasons and conditions for each unscheduled blast.
(Natural Resources Commission; 312 IAC 25-6-97; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3562, eff Dec 1, 2001)

312 IAC 25-6-98 Underground mining; disposal of underground development waste and excess spoil
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 98. All excess underground development waste and spoil material resulting from coal mining and reclamation activities must be placed as follows:
(1) Spoil shall be transported and placed in a controlled manner in position for concurrent compaction and to:
(A) assure mass stability;
(B) prevent mass movement; and
(C) ensure a long term static safety factor of one and five-tenths (1.5).
(2) The areas of disposal shall be within the bonded permit areas, and all organic matter shall be removed immediately before spoil placement.
(3) Sufficient surface and internal drainage systems and diversion ditches shall be used to prevent spoil erosion and movement.
(4) The disposal area shall not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent infiltration of the water into the spoil pile.
(5) If placed on a slope, the spoil shall be placed upon the most moderate slope available that the director determines will ensure compliance with IC 14-34. If possible, the spoil shall be placed upon or above a natural terrace, bench, or berm if this placement will provide additional stability and prevent mass movement.
(6) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement shall be constructed.
(7) The final configuration shall be compatible with the natural drainage pattern and surroundings and suitable for intended uses. Terraces may be constructed on the outslope of the bank or banks if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than fifty percent (50%), 2h:1v.
(8) The spoil disposal area shall be designed under the supervision of, and certified after construction by, a qualified registered professional engineer as follows:
(A) A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist must be experienced in the construction of earth and rock fills.
(B) The inspections described in clause (A) must be made at least quarterly throughout construction and during critical construction periods. Examples of critical construction periods include the following:

(i) Foundation preparation, including the removal of organic material and topsoil.
(ii) The placement of underdrains and protective filter systems.
(iii) The installation of final surface drainage systems.
(iv) The placement and compaction of fill materials.
(v) The establishment of the final graded and revegetated fill.

(C) The registered professional engineer shall provide a report to the director promptly after each inspection performed under clause (B) that the fill has been constructed and maintained as designed and under the approved plan and this article. The report shall include appearances of instability, structural weakness, and other hazardous conditions. A report on any drainage system or protective filter shall include color photographs taken during and after construction (but before an underdrain is covered with excess spoil). The photographs must 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. If an underdrain system is constructed in phases, each phase shall be certified separately.

(D) A copy of each inspection report shall be retained at or near the mine site.

(9) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings upon the stability of the structure.

(10) Spoil shall be placed in horizontal lifts not exceeding four (4) feet thick, except where the director approves a greater thickness based upon a demonstration by the operator, and certification by a qualified registered professional engineer, that the design will ensure the stability of the fill and will meet all other applicable requirements.

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

(Natural Resources Commission; 312 IAC 25-6-98; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3562, eff Dec 1, 2001)

312 IAC 25-6-99 Underground mining; coal mine waste; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 99. (a) All coal mine waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed in new or existing disposal areas within a permit area. The disposal area shall be designed, constructed, and maintained in accordance with section 98 of this rule, this section, and sections 100 through 104 of this rule.

(b) Coal mine waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles, may be disposed of in the permit area, only if approved by the director.

(c) Approval for the disposal of waste from subsection (a) or (b) shall be based on a showing by the person who conducts underground mining activities in the permit area, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of such materials:

(1) minimizes adverse effects of leachate and surface water run-off on surface water and ground water quality and quantity;

(2) does not create public health hazards;

(3) ensures mass stability and prevents mass movement during and after construction;

(4) ensures that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use by covering with a four (4) foot layer of the best available, nontoxic, noncombustible material. The director may allow less than four (4) feet of cover based upon physical and chemical analyses which show that the requirements of this section and sections 100 through 102 are met; and

(5) prevents combustion.

(d) Design certification requirements are as follows:

(1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the director. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long term static safety factor of one and five-tenths (1.5). The

foundation and abutments must be stable under all conditions of construction.

(e) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(f) If any examination or inspection discloses that a potential hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(g) Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the director and the Mine Safety and Health Administration under section 104 of this rule. *(Natural Resources Commission; 312 IAC 25-6-99; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3563, eff Dec 1, 2001)*

312 IAC 25-6-100 Underground mining; coal mine waste; refuse piles; site inspection

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 100. (a) All refuse piles shall be inspected, on behalf of the person conducting underground mining activities, by a qualified registered engineer, or a Mine Safety and Health Administration certified inspector or another qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(b) The inspection required under subsection (a) shall occur at least quarterly throughout construction and during critical construction periods. Examples of critical construction periods include the following:

(1) Foundation preparation, including the removal of organic material and topsoil.

(2) The placement of underdrains and protective filter systems.

(3) The installation of final surface drainage systems.

(4) The establishment of the final graded and revegetated facility.

(c) In addition to the inspections required under subsection (b), regular inspections by a qualified registered professional engineer, or a Mine Safety and Health Administration certified inspector or other qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer, must also be conducted during the placement and compaction of coal mine waste materials. The director shall require more frequent inspection under this subsection and subsection (b) based upon a finding of the potential danger to the health or safety of the public and the potential harm to land, air, and water resources. Inspections may terminate when the refuse pile has been adequately reclaimed.

(d) A person who conducts an inspection under this section shall consider the following:

(1) The steepness of slopes, seepage, and other visible factors which could indicate potential failure.

(2) The results of failure with respect to the threat to human life and property.

(e) A person who conducts an inspection under this section must provide a certified copy of the inspection report to the director promptly after each inspection. The report shall state whether the refuse pile is constructed and maintained as designed and in accordance with the approved reclamation plan.

(f) The permittee shall maintain copies of the inspection findings at or near the mine site.

(g) An inspection shall include observations and tests required to ensure that all organic material and topsoil have been removed to the extent necessary to evaluate the potential hazard to human life and property.

(h) If any inspection discloses that a hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately, and the director shall notify the appropriate agencies that other emergency procedures are required to protect the public from the coal processing waste area.

(i) A certified report on a drainage system and protective filters required by subsections (b) and (e) must 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 certified 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. *(Natural Resources Commission; 312 IAC 25-6-100; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3564, eff Dec 1, 2001)*

312 IAC 25-6-101 Underground mining; coal mine waste banks; refuse piles; water control measures

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 101. Refuse piles shall meet the requirements of section 99 of this rule, 30 CFR 77.214, 30 CFR 77.215, and the following:

(1) Drainage control shall be provided as follows:

(A) If the disposal area contains springs, natural or manmade water 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.

(B) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Run-off from the areas above the refuse pile and run-off from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of section 78 of this rule to safely pass the run-off from a one hundred (100) year, six (6) hour precipitation event. Run-off diverted from undisturbed areas need not be commingled with run-off from the surface of the refuse pile.

(C) Underdrains shall comply with the requirements of section 102 of this rule.

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

(3) The following are placement requirements:

(A) 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 75 of this rule. If approved by the director, 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.

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

(C) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the director if they are not incompatible with the stability of the refuse pile and if they are needed to:

(i) retain moisture;
(ii) minimize erosion;
(iii) create and enhance wildlife habitat; or
(iv) assist revegetation.

(D) 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 earthen material, in a manner that does not impede drainage from the underdrains. The director may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of sections 115 through 122 of this rule will be met.

(Natural Resources Commission; 312 IAC 25-6-101; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3565, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-6-102 Underground mining; coal mine waste; refuse piles; construction requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 102. (a) Refuse piles shall be designed to conform to applicable Mine Safety and Health Administration standards, section 99 of this rule, and the additional requirements of this section.

(b) Following final grading of the refuse pile, the site shall be covered with the best available nontoxic, noncombustible material, in accordance with sections 75 and 112(f) of this rule, in a manner that does not impede drainage from the underdrains. The refuse pile shall be revegetated in accordance with sections 115 through 122 of this rule.

(c) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices, and meet any design criteria established by the director. The underdrain system shall be designed to carry the anticipated seepage

of water due to rainfall away from the excess spoil fill and seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-forming and nontoxic-forming rock, for example:

(1) natural sand and gravel;
(2) sandstone;
(3) limestone; or
(4) other durable rock;

that does not slake in water or degrade to soil material and that is free of coal, clay, or other nondurable material. Perforated pipe underdrains shall be corrosion-resistant and shall have characteristics consistent with the long term life of the fill. *(Natural Resources Commission; 312 IAC 25-6-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001)*

312 IAC 25-6-103 Underground mining; coal processing waste; burning

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 103. Coal processing waste fires shall be extinguished by the person who conducts the mining activities, and in accordance with applicable Mine Safety and Health Administration (MSHA) standards. *(Natural Resources Commission; 312 IAC 25-6-103; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001)*

312 IAC 25-6-104 Underground mining; coal processing waste; return to underground workings

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 104. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the director under 312 IAC 25-4-90 and 312 IAC 25-4-96. *(Natural Resources Commission; 312 IAC 25-6-104; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001)*

312 IAC 25-6-105 Underground mining; disposal of noncoal wastes

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 105. (a) Noncoal wastes, including, but not limited to:

(1) grease;
(2) lubricants;
(3) paints;
(4) flammable liquids;
(5) garbage;
(6) abandoned mining machinery;
(7) timber; and
(8) other combustibles generated during underground mining activities;

shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or ground water, fires are prevented, and the area remains stable and suitable for reclamation and revegetation.

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with sections 115 through 122 of this rule. Operation of the disposal site shall be conducted in accordance with all local, Indiana, and federal requirements.

(c) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight (8) feet of any coal outcrop or coal storage area. *(Natural Resources Commission; 312 IAC 25-6-105; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001)*

312 IAC 25-6-106 Underground mining; coal mine waste; refuse piles; dams and embankments; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 106. (a) A new or existing impounding structure constructed of coal mine waste or intended to impound coal mine waste must comply with section 99 of this rule, this section, and sections 107 through 108 of this rule.

(b) Coal mine waste shall not be used for construction of impounding structures unless the permittee demonstrates to the director that the stability of such a structure achieves each of the following:

(1) Conforms to the requirements of this rule.

(2) The use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted in the reclamation plan under 312 IAC 25-4-87.

(c) An impounding structure constructed of coal mine waste or intended to impound coal mine waste must be designed, constructed, and maintained under the applicable portions of section 84 of this rule. The impounding structure cannot be retained permanently as part of the approved postmining land use.

(d) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have:

(1) sufficient spillway capacity to safely pass;

(2) adequate storage capacity to safely contain; or

(3) a combination of storage capacity and spillway capacity to safely control;

the probable maximum precipitation of a six (6) hour precipitation event or greater event as specified by the director. Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(e) Run-off from areas above the disposal facility or run-off from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to satisfy sections 78 and 79 of this rule and to safely pass run-off from the one hundred (100) year, six (6) hour design precipitation event.

(f) As used in this section, "impounding structure" does not include incised impoundments or impoundments plugged by massive earthen fills, as determined by the Mine Safety and Health Administration, that would be treated as incised impoundments under good engineering practices.

(g) For an impounding structure constructed of coal mine waste or impounding coal mine waste, at least ninety percent (90%) of the water stored during the design precipitation event shall be removed within the ten (10) day period following the design precipitation event. *(Natural Resources Commission; 312 IAC 25-6-106; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3567, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-6-107 Underground mining; coal processing waste; dams and embankments; site preparation

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 107. The following requirements apply before coal processing waste is placed at a dam or embankment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with sections 70 through 106 of this rule, this section, and sections 108 through 132 of this rule.

(2) Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with section 78 of this rule. Adequate outlets for discharge from these diversions shall be in accordance with section 82 of this rule. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to protect public health and safety and the environment. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with section 82 of this rule. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with sections 76 through 81 of this rule.

(Natural Resources Commission; 312 IAC 25-6-107; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3567, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-6-108 Underground mining; coal mine waste; refuse piles; dams and embankments; design and construction

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 108. (a) The design of each dam and embankment constructed of coal mine waste shall comply with the applicable requirements of sections 84 and 99 of this rule, modified as follows:

(1) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet.

(2) The dam and embankment shall have a minimum safety factor of one and five-tenths (1.5) for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(3) The dam or embankment foundation and abutments 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 to determine the safety factors of the dam or embankment for all loading conditions appearing in subdivision (2).

(b) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(c) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety percent (90%) of the water stored during the design precipitation event can be removed within a ten (10) day period. *(Natural Resources Commission; 312 IAC 25-6-108; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3568, eff Dec 1, 2001)*

312 IAC 25-6-109 Underground mining; protection of fish, wildlife, and related environmental values

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 109. (a) Any person conducting underground mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and their habitats and achieve enhancement of those resources where practicable.

(b) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of these species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.). The permittee shall promptly report to the director any endangered or threatened species which is listed by the state or federal government within the permit area of which the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(c) A person who conducts surface mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit areas are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA, (1970)). Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds. For informational purposes, these two (2) documents are available at the OSM Office, United States Department of the Interior, South Interior Building, Washington, D.C., 20240, at each OSM regional office, district office, and field office, and at the central and field office of the division of reclamation.

(d) No surface mining activity shall be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the director, any golden or bald eagle nest within the permit area of that the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(e) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available, establish the following:

(1) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law.
(2) Fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentration of toxic-forming materials.
(3) Restore, enhance, where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.
(4) Restore, enhance, where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetlands areas.
(5) Afford protection to aquatic communities by avoiding stream channels as required in sections 91 and 125 of this rule or restoring stream channels as required in section 79 of this rule.
(6) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the director.
(7) To the extent possible, prevent, control, and suppress range, forest, and coal fires that are not approved by the director as part of a management plan.
(8) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of sections 115 through 122 of this rule, establish the following:
(A) Select plant species to be used on reclaimed areas, based on the following criteria:
(i) Their proven nutritional value for fish and wildlife.
(ii) Their uses as cover for fish and wildlife.
(iii) Their ability to support and enhance fish and wildlife habitat after release of bonds.
(B) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed to optimize edge effect, cover, and other benefits for fish and wildlife.
(9) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, 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. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished.
(10) Where the primary land use is to be residential, public service, or industrial, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.
(Natural Resources Commission; 312 IAC 25-6-109; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3568, eff Dec 1, 2001)

312 IAC 25-6-110 Underground mining; slides and other damage
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 110. At any time a slide occurs that may have a potential adverse effect on public property, health, safety, or the environment, the person who conducts the mining activities shall notify the director by the fastest available means and comply with any remedial measures required by the director. *(Natural Resources Commission; 312 IAC 25-6-110; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3569, eff Dec 1, 2001)*

312 IAC 25-6-111 Underground mining; contemporaneous reclamation
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 111. Reclamation efforts, including, but not limited to:
(1) backfilling;
(2) grading;
(3) topsoil replacement; and
(4) revegetation;
of all areas affected by surface operations shall occur as contemporaneously as practicable with mining operations. *(Natural Resources Commission; 312 IAC 25-6-111; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3569, eff Dec 1, 2001)*

312 IAC 25-6-112 Underground mining; backfilling and grading; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 112. (a) Disturbed areas shall be backfilled and graded to include the following:

(1) Achieve approximate original contour, except as provided in subsection (k).

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in subsections (h) and (k)(2).

(3) Achieve a postmining slope that does not exceed 3:1 (h:v) or the lesser slope needed to achieve a minimum long term static safety factor of one and three-tenths (1.3) and to prevent slides.

(4) Minimize erosion and water pollution both on and off the site.

(5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed under subsection (d) or section 98 of this rule, shall be returned to the mined-out surface area.

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

(d) Spoil may be placed on the bonded, permitted area outside the mined-out surface 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 is removed from the area.

(2) The topsoil on the area is removed, segregated, stored, and redistributed under section 75 of this rule.

(3) The spoil is backfilled and graded on the area under this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be under sections 99 and 101 of this rule, except that a long term static safety factor of one and three-tenths (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 earthen material, or treated, to control the impact on surface and ground water under section 76 of this rule to prevent sustained combustion and to minimize adverse effects on plant growth and the approved postmining land use.

(g) The director may approve as a term of a permit the construction of cut-and-fill terraces if the permittee demonstrates:

(1) that the terraces are needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes if the terraces are compatible with the approved postmining land use; or

(2) specialized grading, foundation conditions, or roads are required for the approved postmining land use. Final grading under this subdivision may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

(h) Small depressions (which do not interfere with the approved postmining land use) may be constructed if needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may remain if authorized by the director under section 84 of this rule.

(j) Preparation of final-graded surfaces shall be conducted to minimize erosion and to provide a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour if:

(1) approval is obtained from the director in the approved permit application for a variance from approximate original contour requirements under 312 IAC 25-4-101; or

(2) incomplete elimination of highwalls in previously disturbed areas is approved under subsection (l).

(l) If sufficient spoil is not otherwise available to comply with this section, the director may approve as a term of a permit a modification of the requirements of this section under section 144(e) of this rule for underground mining operations that affect previously mined lands that:

(1) contain a preexisting highwall; and

(2) have not been restored to the standards of this section.

(Natural Resources Commission; 312 IAC 25-6-112; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3569, eff Dec 1, 2001)

312 IAC 25-6-113 Underground mining; stabilization of surface areas

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 113. (a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) When rills and gullies form in regraded, topsoiled areas and the rills and gullies disrupt the approved postmining land use, disrupt the reestablishment of vegetative cover or cause or contribute to a violation of applicable effluent limitations and the rill or gully is not vegetated or otherwise stabilized, the rill or gully shall be:

(1) filled, regraded, or otherwise stabilized;

(2) topsoil shall be replaced; and

(3) the area shall be reseeded or replanted.

(Natural Resources Commission; 312 IAC 25-6-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3570, eff Dec 1, 2001)

312 IAC 25-6-114 Underground mining; backfilling and grading; previously mined areas

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 114. (a) A remining operation on a site that contains a preexisting highwall must comply with section 112 of this rule, except as provided under this section.

(b) Section 112(a)(2) of this rule does not apply to a remining operation if the volume of reasonably available spoil is demonstrated, in writing, to the director to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall must be eliminated to the extent technically practicable as follows:

(1) Spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.

(2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and that provides adequate drainage and long term stability.

(3) A highwall remnant shall be stable and shall not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate to the director that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if the disturbance will cause instability of the remaining spoil or will otherwise increase hazards to pubic health, safety, or the environment.

(Natural Resources Commission; 312 IAC 25-6-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3570, eff Dec 1, 2001)

312 IAC 25-6-115 Underground mining; revegetation; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 115. (a) Each person who conducts underground mining activities shall establish on all areas disturbed by surface operations and facilities a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area that supports the approved postmining land use.

(b) All revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use, such that:

(1) vegetative cover shall be capable of stabilizing the soil surface from erosion; and

(2) if both the premining and postmining land uses are cropland, planting of the crops normally grown will meet the requirements of subsection (a).

(Natural Resources Commission; 312 IAC 25-6-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3571, eff Dec 1, 2001)

312 IAC 25-6-116 Underground mining; revegetation; use of introduced species

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 116. (a) Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan if approved by the director under the following conditions:

(1) The species are compatible with the plant and animal species of the region.

(2) The species meet the requirements of applicable Indiana seed or introduced species statutes and are not poisonous or

noxious.

(b) As used in this section, "native species" means a species previously introduced and adapted to the state in the general vicinity of the coal producing region. *(Natural Resources Commission; 312 IAC 25-6-116; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3571, eff Dec 1, 2001)*

312 IAC 25-6-117 Underground mining; revegetation; timing

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 117. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final soil preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established. *(Natural Resources Commission; 312 IAC 25-6-117; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3571, eff Dec 1, 2001)*

312 IAC 25-6-118 Underground mining; revegetation; mulching and soil stabilizing

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 118. (a) Suitable mulch or other necessary soil stabilizing practices shall be used on all regraded and topsoiled areas to do any of the following:

(1) Control erosion.

(2) Promote germination of seeds.

(3) Increase the moisture retention capacity of the soil.

The director may, on a case-by-case basis, suspend the requirement for mulch if the permittee can demonstrate that alternative procedures will achieve the requirements of sections 120 through 122 of this rule and do not cause or contribute to air or water pollution.

(b) Mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation when required by the director.

(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the director determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use. *(Natural Resources Commission; 312 IAC 25-6-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3571, eff Dec 1, 2001)*

312 IAC 25-6-119 Underground mining; revegetation; grazing

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 119. When the approved postmining land use is pasture land, the reclaimed land may be used for livestock grazing, if approved by the director. *(Natural Resources Commission; 312 IAC 25-6-119; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3572, eff Dec 1, 2001)*

312 IAC 25-6-120 Underground mining; revegetation; standards for success for nonprime farmland

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 120. (a) Success of revegetation is judged on the following:

(1) The effectiveness of the vegetation for the approved postmining land use.

(2) The extent of cover compared to the cover occurring in natural vegetation in the area.

(3) The general requirements of section 115 of this rule.

(b) Ground cover, production, and stocking are satisfactory if they are not less than ninety percent (90%) of the success standard as determined by the sampling techniques under section 121 of this rule and the statistical methodology under section 122 of this rule.

(c) Standards for success are applied under the approved postmining land use and must include the following conditions:

(1) For a previously mined area that was not reclaimed under sections 1 through 119 of this rule, this section, and sections 121 through 148 of this rule, the ground cover of living plants shall be as follows:

(A) Not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(B) Not less than the cover existing before redisturbance.

(C) Adequate to control erosion.

(2) For an area to be developed for an industrial/commercial or a residential use less than two (2) years after regrading is completed, the ground cover of living plants shall not be less than what is required to control erosion.

(3) For pastureland, the ground cover success standard shall be one hundred percent (100%). In addition, the production of living plants on the revegetated area shall be equal to one (1) of the following:

(A) An approved reference area.

(B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

(C) A target yield determined by the following formula:

Target Yield = NRCS Target Yield H (CCA/10 Year CA)

Where:	NRCS Target Yield =	The average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used and shall be contained in the appropriate sections of the permit application.
	CCA =	The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.
	10 Year CA =	The 10 year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the 9 preceding years.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(4) For an area to be developed as a shelter belt or for a fish and wildlife habitat, recreation, or forestry land use, the success of vegetation is determined on the basis of tree, shrub, or half-shrub stocking and ground cover. The area seeded to a ground cover is not acceptable unless the director determines the ground cover is adequate to control erosion. Stocking rates are those in the approved permit reclamation plan and are not less than the following:

(A) Four hundred fifty (450) plantings per acre for a forestry use.

(B) A rate appropriate to support a shelter belt or a land use (other than forestry) described in this subsection. The rate established under this clause may be adjusted for particular areas within a shelter belt or other land use in order to

support a diverse wildlife habitat if the adjusted rate is approved in the plan of reclamation and will not result in erosion.

(5) For an area to be used as cropland, crop production on the revegetated area must be at least equal to one (1) of the following:

(A) An approved reference area.

(B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

(C) A target yield determined by the following formula:

Target Yield = CCA × (NRCSP/NRCSC)

Where: CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

NRCSP = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that existed on the permit area at the time the permit was issued.

NRCSC = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that is shown to exist in the county on the most current county soil survey.

A croppable soil is any soil that the Natural Resources Conservation Service has defined as being in capability Class I, II, III, or IV.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(6) A crop grown to demonstrate satisfaction of the requirements of subdivision (5) must be one (1) or more of the crops listed in 312 IAC 25-1-33 and as specified in the plan of reclamation. An adjustment to predicted crop yields may be made according to accepted agronomic practices, after consultation with the Natural Resources Conservation Service or other sources approved by the director for factors, including disease, weather, tillage management, pests, and seed or plant selection.

(7) The aggregate of the barren areas within an area under evaluation must not exceed five percent (5%) of the area. Revegetation is not successful unless each barren area within an area under evaluation is as follows:

(A) Smaller than seven hundred fifty (750) square feet.

(B) Completely surrounded by desirable vegetation.

(C) In compliance with sections 75 and 112 of this rule.

(d) A single reference area may be used for more than one (1) permit area if the requirements of this subsection are met with respect to each permit area. A reference area used to establish success standards under this section must meet the following requirements:

(1) If the area to be represented contains more than fifty (50) acres, the reference area shall contain at least five (5) acres unless the director approves a smaller area. If the area to be represented contains less than fifty (50) acres, the reference area shall be the greater of:

(A) ten percent (10%) of the area to be represented; or

(B) one (1) acre.

(2) Each reference area shall be representative of the geology, soils, slopes, and vegetation of the area to be represented.

(3) Management of the reference area shall be identical to the area to be represented.

(4) Each reference area must be located within twenty (20) miles of the area to be represented.

(5) Right-of-entry on the reference area for the authorized representatives of the director must be secured by written agreement or consent for the entire period in which the reference area will be used.

(e) In determining the period of responsibility under 310 IAC 12-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

(1) the selective husbandry practices can be expected to continue as part of the postmining land use; or

(2) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(f) Selective husbandry practices that may be approved under subsection (e) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

(1) Disease, pest, and vermin control.

(2) Repair of rills and gullies.

(3) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(g) The success standards identified in subsection (c) shall be met during the growing seasons of any two (2) years of the responsibility period, except the first year, for cropland or pastureland. The success standards for any other land use are measured by the last year of the responsibility period. *(Natural Resources Commission; 312 IAC 25-6-120; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3572, eff Dec 1, 2001)*

312 IAC 25-6-121 Underground mining; revegetation; sampling techniques

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 121. (a) Success of revegetation is evaluated according to the standards as set forth in section 120 of this rule and (if a measurable success standard applies) using sampling techniques set forth in this section or that:

(1) have a ninety percent (90%) statistical confidence interval (in other words, a one (1) sided test with a ten-hundredths (0.10) alpha error); and

(2) are approved by the director.

(b) The following methods may be used to evaluate ground cover:

(1) The percentage of ground cover shall be assessed within one (1) square foot units randomly located in the area under evaluation. Each unit shall be divided into one hundred (100) equal parts to form a grid. The percentage of ground cover within each unit is equal to the number of parts that contain vegetation or litter. The minimum number of observations for the area under evaluation and methods of analysis shall be determined under section 122 of this rule.

(2) The percentage of ground cover shall be assessed by determining the number of points at one (1) foot intervals that intersect ground cover along one hundred (100) foot lines randomly located in the area under evaluation. A point shall be considered as intersecting ground cover when the location immediately under the point contains either the aerial parts of the vegetation or litter that is produced naturally on-site. The percentage of vegetative ground cover assessed for each line is an individual observation. The minimum number of observations for the area under evaluation and the methods of analysis are determined under section 122 of this rule.

(c) The following methods may be used to evaluate the production of living plants on cropland used for hay and on pastureland:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be cut, adequately cured under acceptable agronomic practices, and baled. The total number of bales produced per cutting from the area under evaluation shall be determined. The weight of individual bales randomly selected from the area under evaluation shall be determined. The weight of each bale shall be considered an individual observation for the purposes of section 122 of this rule. The minimum number of bales to be weighed shall be determined using the following table:

Size of Area under Evaluation (Acres)	Minimum Number of Small Bales (Less than 100 pounds)	Minimum Number of Large Bales (At least 100 pounds)
0–39	10	4
40–279	15	6
280–639	20	10

For areas larger than six hundred forty (640) acres, one (1) additional bale is required for each additional thirty-five (35) acres. The adequacy of the sample and the mean weight of the bales shall be determined using the methods set forth in section 122(c) and 122(e) of this rule. The production of the area under evaluation shall be determined using the following formula:

$$P = (X \times N_B)\ (A \times 2{,}000)$$

Where: P = Production of area (tons per acre).
X = Mean weight for weight of bale (pounds per bale).

N = Total number of bales produced.
A = Size of area under evaluation (acres).

(2) With respect to a test plot (an area that, due to soils, topography, age, management, locality, and any other factor that affects production, can be expected to produce the same yield as the area being evaluated), the director shall determine whether a test plot is representative of the evaluated area. Test plots collectively shall be at least ten percent (10%) of the area represented, unless the director approves a smaller percentage. No test plot shall be less than one (1) acre. The test plot must be harvested independently of the surrounding area or, if harvested at the same time, records must be maintained by the permittee that provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetative cover equal to the approved success standard as identified in section 120(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) With respect to yield estimates from clippings, the vegetation growing in one (1) yard squares shall be randomly located in the area under evaluation, clipped, adequately cured under acceptable agronomic practices, and weighed to determine the production from living plants. The vegetation shall be clipped to leave at least one (1) node on the stem to provide for regeneration of foliage. If more than one (1) cutting is necessary to prove the production of the area under evaluation, all additional cuttings must come from the same selected squares unless the entire field is mowed. New squares may be randomly located each year. The production of the area under evaluation (expressed as tons per acre) shall be extrapolated from the clippings obtained from each individual square. For the purposes of section 122 of this rule, the extrapolated production from each square shall be considered an individual observation. The minimum number of observations for the area under evaluation and methods for analysis shall be determined under section 122 of this rule.

(d) The following methods may be used to evaluate the production of living plants on cropland for crops other than hay:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be harvested and the yield obtained. Each yield shall be adjusted for moisture content and certified as to accuracy. Each yield shall be documented by presenting weigh tickets from a grain elevator or by other means acceptable to the director.

(2) With respect to a test plot, as defined under subsection (c)(2), the director shall determine whether a test plot is representative of the evaluated area. The yield shall be adjusted for moisture content. Test plots collectively shall be at least ten percent (10%) of the area to be represented, unless the director approves a smaller area, but not less than one (1) acre. The test plot must be harvested independently of the surrounding area, or, if harvested at the same time, records must be maintained by the permittee which provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetation or must be used for crop production as provided in the plan of reclamation. The portion in permanent vegetation must have a ground cover equal to the approved success standard as identified in section 120(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) Yield estimates for corn and soybean grain counts shall be counted under methods used by one (1) of the following:

(A) Purdue University.
(B) University of Illinois.
(C) Another institution approved by the director.

(e) This method may be used to evaluate stocking or planting on an area developed as fish and wildlife habitat recreation, forest, or shelter belt. Each acceptable tree, shrub, and half-shrub shall be counted that is located within a circle formed by a twenty (20) foot radius centered on a randomly selected point. Each area counted is an individual observation for purposes of section 122 of this rule. The sufficiency of the number of observations shall be determined, and the statistical analysis of the results shall be performed under section 122 of this rule. A tree, shrub, or half-shrub is counted if the species:

(1) is designated in the approved reclamation plan;
(2) is alive and healthy; and
(3) has been in place for at least two (2) growing seasons, with at least eighty percent (80%) of the species counted having been in place for at least three (3) growing seasons.

(Natural Resources Commission; 312 IAC 25-6-121; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3574, eff Dec 1, 2001)

312 IAC 25-6-122 Underground mining; revegetation; statistical methodology

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 122. (a) The methods set forth in this section are used to evaluate the success of revegetation under section 120 of this

rule using the sampling techniques under section 121 of this rule.

(b) The minimum number of observations for the area under evaluation shall be determined as provided under this subsection as follows:

(1) Except as provided in subdivisions (2) through (3), the following table is used to determine the required minimum number of observations:

Size of Area Under Evaluation (In Acres)	Crop	Minimum Number of Observations
	Corn	
0–39		8
40–279		12
280–639		16
640 or more		2
	Soybeans	
0–39		10
40–279		12
280–639		16
640 or more		26
	Wheat and Oats	
0–39		6
40–279		8
280–639		10
640 or more		14
	Sorghum	
0–39		10
40–279		16
280–639		28
640 or more		40
	Mixed Hay	
0–39		5
40–279		10
280–639		20
640 or more		20 + 1 additional sample for each 35 acres in excess of 640 acres

(2) If any two (2) observations vary by more than fifteen percent (15%), the director may increase the minimum number of observations required by the table in subdivision (1). If additional samples are required, the formula in subsection (e) shall be used to determine that the number of observations evaluated is sufficient.

(3) A statistical analysis of the result obtained from the area under evaluation shall be performed using the method from subsection (c) or (d). If there are apparent discrepancies between the submitted yield derived from random sampling and yield estimates derived by the director, the operator may be required to harvest specific fields in their entirety.

(c) Sampling results shall be analyzed and the following statistical parameters determined:

(1) Sample mean (average):

$$\overline{X} = \left(\Sigma X_i\right) \div N$$

Where: $\sum X_i$ = The sum of the individual observation values.

N = The number of observations.

(2) Mean deviation squared:

$$M = \Sigma \left(X_i - \overline{X}\right)^2$$

(3) Degree of freedom:

$$d = N - 1$$

(4) Sample standard deviation:

$$s = \sqrt{M \div N}$$

(5) t-value:

$$t = (T - \overline{X}) \div \left(s \div \sqrt{d}\right)$$

Where: T = desired target yield.

The calculated t-value is compared with the value associated with the appropriate degree of freedom (d) in the following table to determine if the standard has been met. The calculated t-value must be less than or equal to the t-value derived from the table to demonstrate that the actual yield has achieved the standard with a ninety percent (90%) or greater statistical confidence.

Degree of Freedom	t-value
1	3.078
2	1.886
3	1.638
4	1.533
5	1.476
6	1.440
7	1.415
8	1.397
9	1.383
10	1.372
11	1.363
12	1.356
13	1.350
14	1.345
15	1.341
16	1.337
17	1.333
18	1.330
19	1.328
20	1.325
21	1.323
22	1.321
23	1.319
24	1.318
25	1.316
26	1.315
27	1.314
28	1.313
29	1.311
30	1.310
40	1.303
60	1.296
120	1.289
∞	1.282

(d) Other statistical methods may be approved by the director.

(e) To determine if the number of samples is sufficient, the following formula will be used:

Number of samples required:

$$\left(\frac{16.4 \times s}{\overline{X}}\right)^2$$

Where: s = Sample standard deviation.
$\overline{X}$ = Mean.

The formula set forth in this subsection prescribes an interactive method in which the number of required samples is dependent upon the variation between the samples. Once a minimum number of samples is obtained, the appropriate information is substituted into this formula to determine if a sufficient number of samples were evaluated given the variation in the data. The collection of additional random samples, together with reapplication of the formula may, depending upon the overall consistency in observations, change the required number of samples as data collection progresses. In general, fewer samples are required if there is greater consistency among samples. *(Natural Resources Commission; 312 IAC 25-6-122; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3575, eff Dec 1, 2001)*

312 IAC 25-6-123 Underground mining; subsidence control; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34-15-6; 30 CFR 817.121

Sec. 123. (a) The permittee must do the following:

(1) Either adopt:

(A) measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or

(B) mining technology that provides for planned subsidence in a predictable and controlled manner.

(2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

(A) the permittee has the written consent of their owners; or

(B) unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

(3) Nothing in this subsection prohibits the standard method of room-and-pillar mining.

(b) The permittee shall comply with all provisions of the approved subsidence control plan prepared under 312 IAC 25-4-91.

(c) The permittee must do the following:

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) Promptly repair, or compensate the owner for, material resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If the repair option is selected, the permittee must fully rehabilitate, restore, or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a noncancelable premium-prepaid insurance policy.

(3) To the extent required under applicable provisions of Indiana law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by subdivision (2) by repairing the damage or compensating the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a noncancelable premium-prepaid insurance policy.

(4) The following with regard to rebuttable presumption:

(A) If damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a thirty (30) degree angle of draw. The director may apply the presumption to a different angle of draw if the director makes a written finding that the different angle has a more reasonable basis than the thirty (30) degree angle of draw, based on geotechnical analysis of the factors affecting

potential surface impacts of underground coal mining operations in Indiana.

(B) A permittee or permit applicant may request that the presumption apply to an angle of draw different from that established by this section. The director may approve application of the presumption to a site-specific angle of draw different than that contained in this section based on a site-specific analysis submitted by an applicant. To establish a site-specific angle of draw, an applicant must demonstrate and the director must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth under this section, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

(C) If the permittee was denied access to the land or property for the purpose of conducting the presubsidence survey in accordance with 312 IAC 25-4-91(a), no rebuttable presumption will exist.

(D) The presumption will be rebutted if, for example, the evidence establishes that the damage:

(i) predated the mining in question;

(ii) was proximately caused by some other factor or factors and was not proximately caused by subsidence; or

(iii) occurred outside the surface area within which subsidence was actually caused by the mining in question.

(E) In any determination of whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonable available information will be made available to, and be considered by, the director.

(5) When subsidence-related material damage to land, structures, or facilities protected under subdivisions (1) through (3) occurs, or when contamination, diminution, or interruption to a water supply protected under section 88 of this rule occurs, the director must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within ninety (90) days of the occurrence of damage, no additional bond is required. The director may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the director finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within ninety (90) days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of protected water supply.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

(1) public buildings and facilities;

(2) churches, schools, and hospitals; or

(3) impoundments with a storage capacity of twenty (20) acre-feet or more, or bodies of water with a volume of twenty (20) acre-feet or more;

unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the director determines that it is necessary in order to minimize the potential for material damage to the features or facilities described in this subsection or to any aquifer or body of water that serves as a significant water source for any public water supply system, the director may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by subsection (d), the director may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The director shall suspend underground mining activities:

(1) under urbanized areas, cities, towns, and communities;

(2) under and adjacent to industrial or commercial buildings, pipelines, major impoundments, or perennial streams; and

(3) under any other location;

if imminent danger is found to inhabitants of urbanized areas, cities, towns, or communities or whenever required or authorized by IC 14-34-15-6.

(g) Within a schedule approved by the director, the permittee shall submit a detailed report of the underground workings as follows:

(1) The detailed report shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the following:

(A) The size, configuration, and approximate location of pillars and entries.

(B) Extraction ratios.

(C) Measures taken to prevent or minimize subsidence and related damage.
(D) Areas of full extraction.
(E) Areas of anticipated coal extraction during the next year.
(F) Other information required by the director.

(2) Upon request of the operator, information submitted with the detailed report may be held as confidential in accordance with the requirements of 312 IAC 25-4-113.

(3) The map submitted under subdivision (1) shall be planned as a continuous map for use throughout the term of all mining operations conducted under the permit and all subsequent renewals thereof, so that areas mined each year may be added and identified on the map according to the year in which they were mined. The map shall be prepared by, or under the direction of, and certified by a qualified professional engineer or registered land surveyor with assistance from experts in related fields such as land surveying.

(Natural Resources Commission; 312 IAC 25-6-123; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3577, eff Dec 1, 2001)

312 IAC 25-6-124 Underground mining; subsidence control; public notice

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 124. At least six (6) months prior to mining, or within that period if approved by the director, the underground mine permittee shall mail a notification to all owners and occupants of surface property and structures above the underground workings, including operators of a pipeline. Copies of the notices shall be maintained at the mine office, or other location approved by the director, and shall be available for inspection by the director. The notification shall include, at a minimum, the following:

(1) An identification of specific areas in which mining will take place.
(2) Anticipated dates that specific areas will be undermined.
(3) The location or locations where the permittee's subsidence control plan may be examined.

(Natural Resources Commission; 312 IAC 25-6-124; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3578, eff Dec 1, 2001)

312 IAC 25-6-125 Underground mining; subsidence control; buffer zones

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 125. (a) Underground mining activities shall not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of twenty (20) acre-feet or more unless the director, on the basis of detailed subsurface information, determines that subsidence will not cause material damage to streams, water bodies, and associated structures. If subsidence causes material damage, measures will be taken to the extent technologically feasible to correct the damage and to prevent additional subsidence from occurring.

(b) Underground mining activities beneath any aquifer that serves as a significant source of water supply to any public water systems shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. The director may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.

(c) Underground mining activities may be conducted beneath or in close proximity to:
(1) a church;
(2) a school;
(3) a hospital;
(4) a courthouse;
(5) a government office; or
(6) another public building or facility;

only upon a finding by the director (made on the basis of detailed subsurface information contained in the approved permit) that the activities will not cause material damage to, or reduce the reasonable foreseeable use of, the public buildings or facilities.

(d) The director shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, pipelines, major impoundments, or permanent streams if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(e) If subsidence causes material damage to a public building or facility described in subsection (c), the director may suspend mining under or adjacent to the public building or facility until the subsidence control plan is modified to ensure prevention of further material damage to the public building or facility.

(f) Within a schedule approved by the director in the approved permit, a permittee shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine. The detailed plan shall include the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, and areas of full extraction. Upon the request of the permittee, information submitted with the detailed plan shall be held as confidential. *(Natural Resources Commission; 312 IAC 25-6-125; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3579, eff Dec 1, 2001)*

312 IAC 25-6-126 Underground mining; cessation of operation; temporary

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 126. (a) Each person who conducts underground mining activities shall effectively support and maintain all surface access openings to underground operations and secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his or her obligation to comply with any provision of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty (30) days or more, or as soon as it is known that a temporary cessation will extend beyond thirty (30) days, persons who conduct underground mining activities shall submit to the director a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures, and water treatment activities that will continue during the temporary cessation. *(Natural Resources Commission; 312 IAC 25-6-126; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3579, eff Dec 1, 2001)*

312 IAC 25-6-127 Underground mining; cessation of operation; permanent

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 127. (a) Persons who cease underground mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas in accordance with this article and according to the permit approved by the director.

(b) All surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the director as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed. *(Natural Resources Commission; 312 IAC 25-6-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3580, eff Dec 1, 2001)*

312 IAC 25-6-128 Underground mining; postmining land use

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 128. (a) All affected areas shall be restored in a timely manner to:

(1) conditions that are capable of supporting the uses which they were capable of supporting before any mining; or

(2) higher or better uses achievable under criteria and procedures of this section.

(b) The premining uses of land to which the postmining land use is compared shall be those uses that the land previously supported, if the land had not been previously mined and had been properly managed. Determinations concerning land use may also consider the following:

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining

use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Prior to the release of lands from the permit area in accordance with 312 IAC 25-5-16 the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses shall be approved by the director after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

(1) The proposed postmining land use is compatible, with adjacent land use and where applicable, with existing local, Indiana, or federal (for federally controlled lands) land use policies and plans, a written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall have been submitted to the director within sixty (60) days of notice by the director and before underground mining activities begin. Any required approval, including any necessary zoning or other changes required for the land use by local, Indiana, or federal (for federally controlled lands) land management agencies, is obtained prior to bond release.

(2) Specific plans are prepared and submitted to the director that show the feasibility of the postmining land use that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The director may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts underground mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under 312 IAC 25-4-86. The letters shall be submitted to the director before underground mining activities begin.

(4) Specific and feasible plans are submitted to the director that show that financing and attainment and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land uses are designed under the general supervision of a registered professional engineer, or other appropriate professionals, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the director and appropriate Indiana and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan before mining activities begin.

(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance, such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, Indiana, and local laws, are reviewed by the director to ensure the following:

(A) There is sufficient water available and committed to maintain crop production.

(B) Topsoil quality and depth are sufficient to support the proposed use.

(10) Air and water quality resulting from the alternative postmining land use will not be impacted in a way that will have a greater adverse effect upon the land within the proposed permit area and adjacent areas than if the alternative postmining land use was not approved.

(d) The requirements of subsection (c) concerning plans and demonstrations to be made prior to the commencement of underground mining activities for alternate postmining land uses are not applicable if the demonstration under 312 IAC 25-4-86(c) is approved by the department. *(Natural Resources Commission; 312 IAC 25-6-128; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3580, eff Dec 1, 2001)*

312 IAC 25-6-129 Underground mining; roads

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 129. (a) Each road, as defined in 312 IAC 25-1-126, shall be classified as either a primary road or an ancillary road as follows:

(1) A primary road is any road that is:

(A) used for transporting coal or spoil;

(B) frequently used for access or other purposes for a period in excess of six (6) months; or

(C) to be retained for an approved postmining land use.

(2) An ancillary road is any road not classified as a primary road.

(b) Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to accomplish each of the following:

(1) Control or prevent erosion.

(2) Control or prevent siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces by measures, such as the following:

(A) Vegetating.

(B) Watering.

(C) Using chemical or other dust suppressants.

(D) Otherwise stabilize all exposed surfaces in accordance with current, prudent engineering practices.

(3) Control or prevent damage to fish, wildlife, or their habitat and related environmental values.

(4) Control or prevent additional contributions of suspended solids to stream flow or run-off outside the permit area.

(5) Neither cause nor contribute to, directly or indirectly, the violation of Indiana or federal water quality standards applicable to receiving waters.

(6) Refrain from seriously altering the normal flow of water in streambeds or drainage channels.

(7) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of:

(A) the National Park System;

(B) the National Wildlife Refuge System;

(C) the National System of Trails;

(D) the National Wilderness Preservation System;

(E) the Wild and Scenic Rivers System, including designated study rivers; and

(F) the National Recreation Areas;

as designated by act of Congress.

(8) Use nonacid-forming and nontoxic-forming substances in road surfacing.

(c) To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for each of the following in accordance with current, prudent engineering practices and any necessary design criteria established by the director:

(1) Grade.

(2) Width.

(3) Surface materials.

(4) Surface drainage control.

(5) Culvert placement.

(6) Culvert size.

(d) Roads shall be located as follows:

(1) No part of any road shall be located in the channel of an intermittent stream that drains a watershed of at least one (1) square mile or perennial stream unless specifically approved by the director in accordance with the applicable portions of sections 77 through 83 and 91 of this rule.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) Roads shall be maintained as follows:

(1) To meet the performance standards of this rule and any additional criteria specified by the director.

(2) Damages caused by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) All roads, insofar as possible, should be located on ridges or on the available flatter slopes to minimize erosion.

(g) Acid-forming and toxic-forming materials encountered in construction of roads approved as a postmining land use shall

be handled in accordance with sections 83 and 112 of this rule.

(h) A road not to be retained under an approved postmining land use shall be reclaimed, as soon as practicable after it is no longer needed for mining and reclamation operations, in accordance with the approved reclamation plan, including the following conditions:

(1) Closing the road to traffic.

(2) Removing all bridges and culverts unless approved as part of the postmining land use.

(3) Removing or otherwise disposing of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain.

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface run-off and erosion.

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with sections 75 and 115 through 122 of this rule.

(Natural Resources Commission; 312 IAC 25-6-129; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3581, eff Dec 1, 2001)

312 IAC 25-6-130 Underground mining; primary roads

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 130. Primary roads shall meet the requirements of section 129 of this rule and the additional requirements of this section as follows:

(1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) Each primary road embankment shall be shown to have a minimum static factor of one and three-tenths (1.3) or shall be designed in compliance with the following design standards:

(A) The embankment foundation area shall be cleared of all organic material and the entire foundation surface shall be scarified.

(B) If the natural slope of the foundation as measured at a right angle to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(C) The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

(D) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

(E) The moisture content of the embankment shall be sufficient to secure proper compaction.

(F) The side slope of the embankment shall be no steeper than 2h:v1.

(G) Maximum fill height shall be twenty-five (25) feet as measured from the natural ground at the downstream toe to the top of the embankment.

(H) The embankment shall have a minimum top with of (h + 35)/5, where “h” is the embankment height as measured from natural ground at the downstream toe to the top of the embankment and shall be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of intermittent streams that drain a watershed of at least one (1) square mile or perennial streams by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:

(i) Bridges.

(ii) Ditches.

(iii) Cross drains.
(iv) Ditch relief drains.
(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:
(i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.
(ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.
(iii) Culverts shall be installed and maintained to sustain each of the following:
(AA) Vertical soil pressure.
(BB) Passive resistance of the foundation.
(CC) The weight of vehicles using the road.
(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with the applicable portions of sections 77 through 83 and 91 of this rule.
(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.
(5) Primary roads shall be surfaced with material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.
(Natural Resources Commission; 312 IAC 25-6-130; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3582, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2467, eff Jan 1, 2005)

312 IAC 25-6-131 Underground mining; other transportation facilities
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 131. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transport facilities shall be designed, constructed or reconstructed, maintained, and the area restored to do the following:
(1) Prevent, to the extent possible using the best technology currently available, the following:
(A) Damage to fish, wildlife, and related environmental values.
(B) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.
(2) Control and minimize diminution or degradation of water quality and quantity.
(3) Control and minimize erosion and siltation.
(4) Control and minimize air pollution.
(5) Prevent damage to public or private property.
(Natural Resources Commission; 312 IAC 25-6-131; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001)

312 IAC 25-6-132 Underground mining; support facilities and utility installations
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 132. (a) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal loading facilities at or near the mine site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner that prevents, to the extent possible using the best technology currently available, the following:
(1) Damage to fish, wildlife, and related environmental values.

(2) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.

(b) All underground mining activities shall be conducted in a manner that minimizes damage, destruction, or disruption of services provided by:

(1) oil, gas, and water wells;

(2) oil, gas, and coal slurry pipelines;

(3) railroads;

(4) electric and telephone lines; and

(5) water and sewage lines;

that pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the director. *(Natural Resources Commission; 312 IAC 25-6-132; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001)*

312 IAC 25-6-133 Underground mining; surveyor corner markers; replacement

Authority: IC 14-34-2-1
Affected: IC 14-34-10; IC 36-2-12-13

Sec. 133. Any person who conducts underground mining activities shall, prior to release of any portion of the applicable performance bond, ensure that all surveyor corner markers disturbed by the underground mining activities are replaced to the same location as found prior to the surface disturbance. *(Natural Resources Commission; 312 IAC 25-6-133; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001)*

312 IAC 25-6-134 Concurrent surface and underground mining; applicability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 134. A variance under this section and sections 135 and 136 of this rule applies only to those specific areas within the permit area that the person conducting combined surface and underground mining activities has shown to be necessary for implementing the proposed concurrent operations and that the director has approved in the permit under 312 IAC 25-4-103. The variance is effective for any particular portion of the permit area only for the time necessary to facilitate the authorized underground mining activities. *(Natural Resources Commission; 312 IAC 25-6-134; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001)*

312 IAC 25-6-135 Concurrent surface and underground mining; compliance with variance terms

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 135. (a) Each person who conducts operations under a variance issued under 312 IAC 25-4-103 shall comply with all applicable requirements of this rule and the regulatory program, except to the extent that:

(1) a delay in compliance with this rule is specifically authorized by the variance issued under the permit; and

(2) the delay in compliance is necessary to achieve the purposes for which the variance was granted.

(b) Each person who conducts activities under a variance issued under 312 IAC 25-4-103 shall comply with each requirement of the variance as set forth in the permit. *(Natural Resources Commission; 312 IAC 25-6-135; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001)*

312 IAC 25-6-136 Concurrent surface and underground mining; additional performance standards

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 136. In addition to sections 5 through 133 of this rule, each person who conducts combined surface and underground mining activities shall comply with the following:

(1) A five hundred (500) foot barrier pillar of coal shall be maintained between the surface and underground mining activities in any one (1) seam. The director may, after consultation with the Mine Safety and Health Administration and the Indiana

bureau of mines, approve a lesser distance after a finding by the director that mining at a lesser distance will result in:

(A) improved coal resources recovery;

(B) abatement of water pollution; or

(C) elimination of hazards to the health and safety of the public.

(2) The vertical distance between combined surface and underground mining activities working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

(3) No combined activities shall reduce the protection provided public health and safety below the level of protection required for those activities if conducted without a variance.

(Natural Resources Commission; 312 IAC 25-6-136; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-6-137 Auger mining; special standards; applicability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 137. This section and section 138 of this rule apply to all surface mining activities involving auger mining. This section and section 138 of this rule are in addition to those in sections 5 through 69 of this rule. *(Natural Resources Commission; 312 IAC 25-6-137; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-6-138 Auger mining; special standards; additional performance standards

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 138. (a) Auger mining associated with surface mining activities shall be conducted to maximize recoverability of mineral reserves remaining after the mining activities are completed. Each person who conducts auger mining operations shall leave areas of the undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the director determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The director shall make this determination only upon presentation of appropriate technical evidence by the operator. Undisturbed areas of coal shall be left in unmined sections that satisfy each of the following:

(1) Are a minimum of two hundred fifty (250) feet wide at any point between each group of auger openings to the full depth of the auger hole.

(2) Are no more than two thousand five hundred (2,500) feet apart, measured from the center of one (1) section to the center of the next section, unless a greater distance is set forth in the permit application under 312 IAC 25-4-104 and approved by the director.

(3) For multiple seam mining, have a width of at least two hundred fifty (250) feet plus fifty (50) feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.

(b) No auger hole shall be made closer than five hundred (500) feet in horizontal distance to any abandoned or active underground mine workings, except as approved under section 35 of this rule.

(c) Except as provided in subsection (d), to prevent the pollution of surface and ground water and to reduce fire hazards, each auger hole shall be plugged to prohibit the discharge of water from the hole and access of air to the coal as follows:

(1) Each auger hole that discharges water containing toxic-forming or acid-forming material shall be sealed within seventy-two (72) hours after completion with noncombustible and impervious material. If sealing within seventy-two (72) hours is not possible, the discharge shall be treated within seventy-two (72) hours after completion to meet applicable effluent limitations and water quality standards until the hole is sealed.

(2) Each auger hole that does not discharge water containing toxic-forming or acid-forming material shall be sealed under subdivision (1) to close the opening as contemporaneously as practicable with the auguring operation in accordance with a schedule approved by the director in the approved permit.

(d) An auger hole need not be plugged if the director finds the following:

(1) The impoundment of water that would result from plugging the hole may create a hazard to the environment or to public health or safety.

(2) The drainage from the auger hole will achieve each of the following:
(A) It will not pose a threat of pollution to surface water.
(B) It will comply with the requirements of sections 12 and 13 of this rule.
(e) The director shall prohibit auger mining if it is determined that any of the following may occur:
(1) Adverse water quality impacts cannot be prevented or corrected.
(2) Fill stability cannot be achieved.
(3) The prohibition is necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources.
(4) Subsidence resulting from auger mining may disturb or damage power lines, pipelines, buildings, or other facilities.
(Natural Resources Commission; 312 IAC 25-6-138; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-6-139 Prime farmland; special performance standards; scope, purpose, and applicability
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 139. (a) This section and sections 140 through 143 of this rule set forth special performance standards for surface coal mining and reclamation operations on prime farmland.
(b) This section and sections 140 through 143 of this rule do not apply to any of the following:
(1) Coal preparation plants associated with underground mines, support facilities associated with underground mines, and roads associated with underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. These uses shall satisfy the following sections of this rule for underground mining activities:
(A) 70 through 74.
(B) 75.
(C) 76 through 96.
(D) 97 through 111.
(E) 112.
(F) 113.
(G) 115 through 133.
(2) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on nonprime farmland. The operator shall minimize the area of prime farmland used for these purposes.
(3) Prime farmland that has been excluded under 312 IAC 25-4-102(a).
(Natural Resources Commission; 312 IAC 25-6-139; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3585, eff Dec 1, 2001)

312 IAC 25-6-140 Prime farmland; special performance standards; United States Soil Conservation Service criteria
Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 823.4

Sec. 140. To carry out his or her responsibilities under 312 IAC 25-4-102 and 312 IAC 25-5, the director shall use any prime farmland soil reconstruction specifications promulgated as rules by the United States Soil Conservation Service for Indiana. *(Natural Resources Commission; 312 IAC 25-6-140; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3585, eff Dec 1, 2001)*

312 IAC 25-6-141 Prime farmland; special performance standards; soil removal and stockpiling
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 141. (a) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.
(b) The minimum depth of soil and substitute soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of section 142(b) of this rule.
(c) Soil removal and stockpiling operations on prime farmland shall be conducted as follows:
(1) To separately remove the topsoil or remove other suitable soil materials where the other soil materials will create a final

soil having a greater productive capacity than that which existed prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials.

(2) To separately remove the B horizon, C horizon, or other suitable soil material to provide the thickness of suitable soil required by section 142(b) of this rule, except as approved by the director where the B horizon or C horizon would not otherwise be removed and where soil capabilities can be retained. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of the soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(d) Stockpiles shall be placed consistent with section 11(d)(1) through 11(d)(2) or 75(d)(1) through 75(d)(2) of this rule where the stockpiles will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall satisfy section 11 or 75 of this rule. *(Natural Resources Commission; 312 IAC 25-6-141; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001)*

312 IAC 25-6-142 Prime farmland; special performance standards; soil replacement

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 142. (a) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be sufficient to create in the reconstructed final soil, a root zone of sufficient depth to support the approved postmining land use and, as described in the approved plan submitted under 312 IAC 25-4-102, that will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

(b) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary by the director to restore the original soil productive capacity. A soil horizon inhibits or prevents root penetration if its physical or chemical properties or water supplying capabilities cause the horizon to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

(c) The operator shall replace and regrade the soil horizons or other root zone material to a uniform depth and in a manner that avoids excessive compaction.

(d) The operator shall replace the B horizon, C horizon, or other suitable material specified in section 141(c)(2) of this rule to the thickness needed to meet the requirements of subsection (b). In an area where the B horizon or C horizon is not removed, but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capabilities.

(e) The operator shall replace the topsoil or other suitable soil materials specified in section 141(c)(2) of this rule as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer as determined by the soil survey, and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.

(f) The operator shall apply nutrients and soil amendments as needed to quickly establish vegetative growth. *(Natural Resources Commission; 312 IAC 25-6-142; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001)*

312 IAC 25-6-143 Prime farmland; special performance standards; revegetation and restoration of soil productivity Version a

Authority: IC 14-34-2-1
Affected: IC 14-34

NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 143. (a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored under the following provisions:

(1) Measurement of soil productivity shall be initiated within ten (10) years after completion of the soil replacement.

(2) Soil productivity on the mined and reclaimed prime farmland area shall be measured using one (1) of the following methods:

(A) Growing crops on a representative sample of the area using the test plot standards of section 60 of this rule.

(B) Growing crops on all of the area.

(3) The sampling techniques contained in section 60 of this rule and the statistical methodology contained in section 61 of this rule shall be used to measure soil productivity.

(4) The period for measuring crop production (yield) shall be at least three (3) crop years before the release of the operator's performance bond.

(5) The level of management applied during the measurement period shall be the same as the level of management used for nonmined prime farmland in the surrounding area.

(6) Restoration of soil productivity is achieved when the yield during the measurement period equals or exceeds one hundred percent (100%) of the success standard found at section 59(c) of this rule for any three (3) years of the responsibility period. One hundred percent (100%) of the success standard must be met with a ninety percent (90%) statistical confidence level, in other words, a one (1) sided test with a 0.10 alpha error. Where reference crops are used for demonstrating productivity, the yield comparisons shall be established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(7) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crops requiring the greatest rooting depth shall be chosen as one (1) of the reference crops.

(8) The reference crop yield may be adjusted for factors including disease, weather, tillage management, pests, and seed or plant selection specified in section 59(c) of this rule.

(9) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

(A) the selective husbandry practices can be expected to continue as part of the postmining land use; or

(B) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(10) Selective husbandry practices that may be approved under subdivision (9) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

(A) Disease, pest, and vermin control.

(B) Repair of rills and gullies.

(C) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(11) The selection of reference areas shall be guided by section 59 of this rule. The selection of an approved reference area must be accomplished with concurrence by the Soil Conservation Service of the United States Department of Agriculture.

(Natural Resources Commission; 312 IAC 25-6-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001)

312 IAC 25-6-143 Prime farmland; special performance standards; revegetation and restoration of soil productivity Version b

Authority: IC 14-10-2-4; IC 14-34-2-1

Affected: IC 14-34

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 143. (a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored under the following provisions:

(1) Measurement of soil productivity shall be initiated within ten (10) years after completion of the soil replacement.

(2) Soil productivity on the mined and reclaimed prime farmland area shall be measured using one (1) of the following methods:

(A) Growing crops on a representative sample of the area using the test plot standards of section 60 of this rule.
(B) Growing crops on all of the area.

(3) The:
(A) sampling techniques contained in section 60 of this rule; and
(B) statistical methodology contained in section 61 of this rule;
shall be used to measure soil productivity.

(4) The period for measuring crop production (yield) shall be at least three (3) crop years before the release of the operator's performance bond.

(5) The level of management applied during the measurement period shall be the same as the level of management used for nonmined prime farmland in the surrounding area.

(6) Restoration of soil productivity is achieved when the yield during the measurement period equals or exceeds one hundred percent (100%) of the success standard found at section 59(c) of this rule for any three (3) years of the responsibility period. One hundred percent (100%) of the success standard must be met with a ninety percent (90%) statistical confidence level, in other words, a one (1) sided test with a 0.10 alpha error. Where reference crops are used for demonstrating productivity, the yield comparisons shall be established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(7) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crops requiring the greatest rooting depth shall be chosen as one (1) of the reference crops.

(8) The reference crop yield may be adjusted for factors including:
(A) disease;
(B) weather;
(C) tillage management;
(D) pests; and
(E) seed or plant selection;
specified in section 59(c) of this rule.

(9) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:
(A) the selective husbandry practices can be expected to continue as part of the postmining land use; or
(B) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(10) Selective husbandry practices that may be approved under subdivision (9) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:
(A) Disease, pest, and vermin control.
(B) Repair of rills and gullies.
(C) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(11) The selection of reference areas shall be guided by section 59 of this rule. The selection of an approved reference area must be accomplished with concurrence by the Soil Conservation Service of the United States Department of Agriculture.

(c) Commercial forest resources may be established on reclaimed prime farmland provided that productivity is demonstrated by subsection (b) and as follows:
(1) The director has approved a forest planting plan and forest management plan in consultation with the division of forestry.
(2) Landowner consent has been obtained.
(3) Forest compatible, permanent ground cover sufficient to control erosion is established and all erosion areas must be repaired or otherwise stabilized.
(4) The required soil replacement depth is verified and approved before trees are planted.
(5) Soil productivity shall be demonstrated under subsection (b).

(Natural Resources Commission; 312 IAC 25-6-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001; filed Sep 19, 2006, 9:27 a.m.: 20061018-IR-312060067FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-

Database Web site)

312 IAC 25-6-144 Steep slopes; backfilling and grading

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 144. (a) Surface mining activities or underground mining activities on steep slopes shall be conducted so as to meet the requirements of 312 IAC 25-6-50 and 312 IAC 25-6-112, and the requirements of this rule except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominately flat area.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the director finds that this disturbance will facilitate compliance with the environmental protection standards of this rule and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody material shall not be buried in the backfilled area unless the director determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfill area.

(e) The disturbed area shall be backfilled and graded to comply with the provisions of sections 50 and 112 of this rule to return the site to approximate original contour and completely cover the highwall; provided, however, that where mining operations affect previously mined areas that were not reclaimed to the standards of sections 50 and 112 of this rule and the volume of all reasonably available spoil is demonstrated in writing to the director in the approved permit application to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) The permittee shall demonstrate to the director in the approved permit application or to the director that the fill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least one and three-tenths (1.3).

(2) All spoil generated by the mining operation and other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment.

(3) The backfill shall be graded to a slope that:

(A) is compatible with the approved postmining land use; and

(B) provides adequate drainage and long term stability.

(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(Natural Resources Commission; 312 IAC 25-6-144; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3587, eff Dec 1, 2001)

312 IAC 25-6-145 Coal preparation plants not within permit area for a mine; permits; applicability

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 145. A person who conducts surface coal mining and reclamation operations, which include the operation of a coal preparation plant that is not located within the permit area for a specific mine, shall obtain a permit under 312 IAC 25-4-106 to conduct those operations and must comply with section 146 of this rule. *(Natural Resources Commission; 312 IAC 25-6-145; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3588, eff Dec 1, 2001)*

312 IAC 25-6-146 Coal preparation plants not within a permit area for a mine; special performance standards

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 146. Construction, operation, maintenance, modification, reclamation, and removal activities under section 145 of this rule and this section shall comply with the following:

(1) Signs and markers for a coal preparation plant shall comply with section 6 of this rule.

(2) Roads, transport facilities, and associated structures shall be constructed, maintained, and reclaimed in accordance with sections 65 through 68 of this rule.

(3) Any stream or channel realignment shall comply with section 15 of this rule.

(4) Any disturbed area related to a coal preparation plant shall have sediment control structures, in compliance with sections 16 and 17 of this rule, and all discharges from these areas must satisfy sections 12 and 13 of this rule and any other applicable Indiana or federal law.

(5) Permanent impoundments associated with coal preparation plants shall satisfy sections 20 and 27 of this rule. Dams constructed of or impounding coal processing waste shall comply with sections 43 through 45 of this rule.

(6) The use of water wells shall comply with section 24 of this rule, and water rights shall be protected under section 25 of this rule.

(7) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with sections 36 through 41, 42, and 34 of this rule, respectively.

(8) Discharge structures for diversions and sediment control structures shall comply with section 18 of this rule.

(9) Air pollution control measures associated with fugitive dust emissions shall comply with section 51(a) of this rule.

(10) Fish, wildlife, and related environmental values shall be protected under section 46 of this rule.

(11) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures, including, but not limited to, compliance with sections 26, 35, and 113 of this rule.

(12) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment under sections 11, 48, 50, 54 through 61, and 62 through 64 of this rule.

(13) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system constituting part of a coal preparation plant shall comply with sections 5 through 69 of this rule.

(14) A coal preparation plant located on prime farmland must satisfy sections 139 through 142 of this rule.

(Natural Resources Commission; 312 IAC 25-6-146; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3588, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-6-147 In situ processing; special performance standards

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 147. (a) Any person who conducts in situ processing activities shall comply with sections 70 through 146 of this rule, this section, and section 148 of this rule.

(b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(1) avoiding discharge of fluids into holes or wells other than as approved by the director;

(2) injecting process recovery fluids only into geologic zones or intervals approved as production zones by the director;

(3) avoiding annular injection between the wall of the drill hole and the casing; and

(4) preventing discharge of process fluid into surface waters.

(c) Each person who conducts in situ processing activities shall submit for approval as part of the application for a permit under 312 IAC 25-4-105, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife, and related environmental values, and threats to the public health and safety.

(d) Each person who conducts in situ processing activities shall prevent the flow of the process recovery fluid:

(1) horizontally beyond the affected area identified in the permit; and

(2) vertically into overlying and underlying aquifers.

(e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit and adjacent area, including ground water above and below the production zone, to the approximate premining levels, to ensure that the potential for use of the ground water is not diminished. *(Natural Resources Commission; 312 IAC 25-6-147; filed Jun 21, 2001, 2:53*

p.m.: 24 IR 3589, eff Dec 1, 2001)

312 IAC 25-6-148 In situ processing; monitoring

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 148. (a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the director under section 86 of this rule, to measure changes in the quantity and quality of water in surface and ground water systems in the permit and adjacent areas.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the director as necessary according to appropriate Indiana and federal air and water quality standards. *(Natural Resources Commission; 312 IAC 25-6-148; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3589, eff Dec 1, 2001)*

312 IAC 25-6-149 Annual report

Authority: IC 14-34-2-1
Affected: IC 14-34-5-10

Sec. 149. (a) As used in this section, "mined land" means the following:

(1) Land from which coal has been extracted.

(2) Land from which overburden has been removed.

(3) Land upon which overburden or spoil has been deposited to facilitate surface coal mining activities.

Mined land does not include land where only auger mining has occurred as reported in subsection (c)(3)(D).

(b) As used in this section, "surface disturbed land" means land, other than mined land, that is disturbed by surface coal mining and reclamation operations, and includes areas where only topsoil is removed. Examples include, but are not limited to, the following:

(1) Sediment basins.

(2) Diversions.

(3) Haul roads.

(4) Office areas.

(5) Preparation plants.

(6) Soil stockpiles.

(7) Beltways.

(8) Support facilities.

(9) Soil removal areas that will not be reaffected by overburden removal or deposition.

The permittee need not report surface disturbed land in advance of the highwall, when the surface disturbance will be reaffected by future overburden removal or deposition.

(c) For each permit to conduct surface coal mining and reclamation operations, an annual report of affected area shall be submitted to the director no later than ninety (90) days after October 31 of each year. The annual report shall document the acres affected annually as of October 31 of the reporting year and contain the following information:

(1) The name and address of the permittee and, if different from the permittee, the name and address of the person or persons conducting the mining and reclamation operations under the permit during the period covered by the report.

(2) The permit number.

(3) A summary of acres, to the nearest whole acre, mined and disturbed during the period from November 1 through October 31 of the year covered by the report. The acreage summary shall include the following:

(A) Acres of mined land.

(B) Acres of surface disturbed land.

(C) Total permit acres.

(D) Acres of coal extraction by surface, auger mining, and highwall mining reported as a separate area from the acres in clauses (A) through (C).

(d) The report shall be accompanied by a dated aerial photograph of the surface coal mining and reclamation operation taken between September 1 and December 31 of the reporting year. The photograph shall be of the same scale as the permit maps and shall show the location of the following areas or features:

(1) The permit boundary.
(2) All acres reported under subsection (c)(3).
(3) Section, township, and range lines with the center of each section numbered.
(4) All public roads within the permit area that are not permanently closed.
(5) All areas where coal has been removed identified by surface, auger, or highwall mining methods.
(6) The highwall face as of November 1 of the reporting year.

The information required by subdivisions (1) through (6) may be provided on a certified map instead of being plotted on the aerial photograph.

(e) When the acres are available on a computer aided design (CAD) or other digital data format, the last report, after the permittee has completed all mining, shall include a summary of premining land use acreage for the mined and surface disturbed area.

(f) Any associated map, whether separate from or created upon a photograph, furnished to satisfy the requirements under subsection (d) shall be:
(1) prepared by or under the direction of; and
(2) certified by;

a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields, such as land surveying or landscape architecture.

(g) For permits issued and affected prior to the effective date of this section and for which a Report of Affected Area has not been filed, the initial photograph shall show all areas disturbed since permit issuance, with no distinction between mined land and surface disturbed land being required on the report form, photograph or map. When available, the extend of augered areas shall be shown.

(h) After the initial report is submitted, if no additional acres have been disturbed during the reporting year, no report is necessary. *(Natural Resources Commission; 312 IAC 25-6-149; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3589, eff Dec 1, 2001)*

Rule 7. Inspection and Enforcement Procedures

312 IAC 25-7-1 Inspections of sites Version a

Authority: IC 14-34-2-1
Affected: IC 14-34-15; IC 14-34-16-7; IC 14-34-16-8

NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site.

Sec. 1. (a) The director shall conduct inspections as follows:
(1) Except as provided in subsection (f), on an irregular basis averaging not less frequently than the following:
(A) One (1) partial inspection per month and one (1) complete inspection per calendar quarter for each active surface coal mining and reclamation operation.
(B) One (1) partial inspection as frequently as is necessary to ensure effective enforcement and one (1) complete inspection per calendar quarter for each inactive surface coal mining and reclamation operation.
(2) Without notice to the person being inspected or any agents or employees of that person except for necessary on-site meetings.
(3) Include the prompt filing of inspection reports adequate to enforce IC 14-34 and this article.

(b) The director shall conduct any inspections of coal exploration operations that are necessary to ensure compliance with IC 14-34 and this article.

(c) Aerial inspections shall be conducted in a manner that reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(d) Any potential violation observed during an aerial inspection shall be investigated on-site upon the occurrence of earlier of the following:
(1) Within three (3) days after the aerial inspection.
(2) Immediately, if there is an indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under IC 14-34-15-6.

(e) An on-site investigation conducted under subsection (d) is not an additional partial inspection or an additional complete

inspection under subsection (a).

(f) In lieu of the inspection frequency established in subsection (a), the regulatory authority 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 (1) complete inspection per calendar year. In selecting an alternate frequency authorized under this subsection, the regulatory authority shall do the following:

(1) First conduct a complete inspection of the abandoned site.

(2) Provide public notice and opportunity to comment under subsection (g).

(3) Prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. The written finding shall justify the new inspection frequency by affirmatively addressing in detail the following criteria:

(A) How the site meets each of the criteria under the definition of an abandoned site in subsection (h) to qualify for a reduction in inspection frequency.

(B) Whether, and to what extent, there exists on the site an impoundment, an earthen structure, or another condition that poses, 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 an existing impoundment or earthen structure was 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 an urbanized area, a community, an occupied dwelling, a school, and another public or commercial building or facility.

(F) The extent of reclamation completed prior to abandonment and the degree of stability of an unreclaimed area, taking into consideration any physical characteristic of the land mined and the extent of settlement or revegetation that has occurred naturally.

(G) Based on a review of the complete or partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(g) The public notice and opportunity to comment required under subsection (f)(2) shall be provided as follows:

(1) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30) day period in which to submit written comments.

(2) The public notice shall contain the following:

(A) Name of permittee.

(B) Permit number.

(C) Precise location of the land affected.

(D) Proposed inspection frequency.

(E) General reasons for reducing the inspection frequency.

(F) Bond status of the permit.

(G) Telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted.

(H) Closing date of the comment period.

(h) As used in this section, the following definitions apply:

(1) "Abandoned site" means a surface coal mining and reclamation operation for which the director has found, in writing, each of the following:

(A) All surface and underground coal mining and reclamation activities at the site have ceased.

(B) The director has issued at least one (1) notice of violation and either:

(i) is unable to serve the notice despite diligent efforts to do so; or

(ii) the notice was served and has progressed to a failure-to-abate cessation order.

(C) The director is taking action:

(i) 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

(ii) under IC 14-34-16-7, IC 14-34-16-8, IC 14-34-15-7, or IC 14-34-15-11 to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where, after evaluating the circumstances, the director concludes that further enforcement offers little or no likelihood of successfully compelling abatement

or recovering any reclamation costs.

(D) If the site is or was permitted or bonded, both of the following are determined:

(i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently.

(ii) The director has initiated and is diligently pursuing forfeiture of (or has forfeited) any available performance bond.

(2) "Complete inspection" means an on-site review of a person's compliance with all permit conditions and requirements imposed under IC 14-34 and this article within the area disturbed or affected by the surface mining and reclamation operation.

(3) "Inactive surface coal mining and reclamation operation" means a surface coal mining and reclamation operation for which both of the following are satisfied:

(A) The reclamation has been completed that is necessary to obtain release of the portion of bond specified in 312 IAC 25-5-16(c)(2).

(B) The bond has been released.

(4) "Partial inspection" means an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under IC 14-34 and this article.

(Natural Resources Commission; 312 IAC 25-7-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3590, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2468, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)

312 IAC 25-7-1 Inspections of sites Version b

Authority: IC 14-10-2-4; IC 14-34-2-1

Affected: IC 14-34-15; IC 14-34-16-7; IC 14-34-16-8

NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR-Database Web site. See also preceding version of this section, effective until superseded by this version of section.

Sec. 1. (a) The director shall conduct inspections as follows:

(1) Except as provided in subsection (f), on an irregular basis averaging not less frequently than the following:

(A) One (1) partial inspection per month and one (1) complete inspection per calendar quarter for each active surface coal mining and reclamation operation.

(B) One (1) partial inspection as frequently as is necessary to ensure effective enforcement and one (1) complete inspection per calendar quarter for each inactive surface coal mining and reclamation operation.

(2) Without notice to the person being inspected or any agents or employees of that person except for necessary on-site meetings.

(3) Include the prompt filing of inspection reports adequate to enforce IC 14-34 and this article.

(b) The director shall conduct any inspections of coal exploration operations that are necessary to ensure compliance with IC 14-34 and this article.

(c) Aerial inspections shall be conducted in a manner that reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(d) Any potential violation observed during an aerial inspection shall be investigated on-site upon the occurrence of earlier of the following:

(1) Within three (3) days after the aerial inspection.

(2) Immediately, if there is an indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under IC 14-34-15-6.

(e) An on-site investigation conducted under subsection (d) is not an additional partial inspection or an additional complete inspection under subsection (a).

(f) In lieu of the inspection frequency established in subsection (a), the regulatory authority 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 (1) complete inspection per calendar year. In selecting an alternate frequency authorized under this subsection, the regulatory authority shall do the following:

(1) First conduct a complete inspection of the abandoned site.

(2) Provide public notice and opportunity to comment under subsection (g).
(3) Prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. The written finding shall justify the new inspection frequency by affirmatively addressing in detail the following criteria:
(A) How the site meets each of the criteria under the definition of an abandoned site in subsection (h) to qualify for a reduction in inspection frequency.
(B) Whether, and to what extent, there exists on the site an impoundment, an earthen structure, or another condition that poses, 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 an existing impoundment or earthen structure was 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:
(i) an urbanized area;
(ii) a community;
(iii) an occupied dwelling;
(iv) a school; and
(v) another public or commercial building or facility.
(F) The extent of reclamation completed before abandonment and the degree of stability of an unreclaimed area, taking into consideration:
(i) any physical characteristic of the land mined; and
(ii) the extent of settlement or revegetation that has occurred naturally.
(G) Based on a review of the complete or partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.
(g) The public notice and opportunity to comment required under subsection (f)(2) shall be provided as follows:
(1) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30) day period in which to submit written comments.
(2) The public notice shall contain the following:
(A) The name of the permittee.
(B) The permit number.
(C) The precise location of the land affected.
(D) The proposed inspection frequency.
(E) The general reasons for reducing the inspection frequency.
(F) The bond status of the permit.
(G) The telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted.
(H) The closing date of the comment period.
(h) As used in this section, the following definitions apply:
(1) "Abandoned site" means a surface coal mining and reclamation operation for which the director has found, in writing, each of the following:
(A) All surface and underground coal mining and reclamation activities at the site have ceased.
(B) The director has issued at least one (1) notice of violation and either:
(i) is unable to serve the notice despite diligent efforts to do so; or
(ii) the notice was served and has progressed to a failure-to-abate cessation order.
(C) The director is taking action:
(i) 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
(ii) under IC 14-34-16-7, IC 14-34-16-8, IC 14-34-15-7, or IC 14-34-15-11 to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where, after evaluating the circumstances, the director concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs.

(D) If the site is or was permitted or bonded, both of the following are determined:
(i) The permit has expired or been revoked.
(ii) The director has initiated and:
(AA) is diligently pursuing forfeiture of; or
(BB) has forfeited;
any available performance bond.

(2) "Complete inspection" means an on-site review of a person's compliance with all permit conditions and requirements imposed under IC 14-34 and this article within the area disturbed or affected by the surface mining and reclamation operation.

(3) "Inactive surface coal mining and reclamation operation" means a surface coal mining and reclamation operation for which both of the following are satisfied:
(A) The reclamation has been completed that is necessary to obtain release of the portion of bond specified in 312 IAC 25-5-16(e)(2).
(B) The bond has been released.

(4) "Partial inspection" means an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under IC 14-34 and this article.

(Natural Resources Commission; 312 IAC 25-7-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3590, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2468, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being posted on the -IR- Database Web site)

312 IAC 25-7-2 Citizen's request for state inspections

Authority: IC 14-34-2-1
Affected: IC 5-14-3; IC 14-34; 30 CFR 842.12

Sec. 2. (a) Whenever, on the basis of any information available to the director, including receipt of information from any person, the director has reason to believe that an operation is in violation of IC 14-34 and this article, an inspection shall be conducted. Such inspection shall be conducted within ten (10) days of receipt of the notification.

(b) The notification shall consist of a signed, written statement (or an oral report followed by a signed, written statement) giving the director reason to believe that a violation, a condition, or a practice referred to in subsection (a) exists and setting forth a phone number and address where the citizen can be contacted.

(c) If the inspection results from information provided by any person, that person may accompany the director or the director's authorized representative on the inspection.

(d) Copies of inspection reports, violation notices, and cessation orders, written as a result of a citizen's request, will be given to the person who caused the inspection to be made and to the permittee alleged to be in violation.

(e) The identity of any person supplying information to the director relating to a possible violation or imminent danger or harm shall remain confidential with the director, if requested by that person, unless:
(1) that person elects to accompany the inspector on the inspection; or
(2) disclosure is required under IC 5-14-3.

(Natural Resources Commission; 312 IAC 25-7-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3591, eff Dec 1, 2001)

312 IAC 25-7-3 Review of adequacy and completeness of inspections

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 3. Any person who is or may be adversely affected by a surface coal mining operation may notify the director, in writing, of any alleged failure on the part of the director to make adequate and complete inspections. The notification shall include sufficient information to create a reasonable belief that adequate and complete inspections are not being made and that the person is or may be adversely affected by such a failure to inspect. The director shall, within fifteen (15) days of receipt of the notification, determine whether adequate and complete inspections have been made. The fifteen (15) day period may be extended because of factors beyond the control of the director. The director shall also furnish the complainant with a written statement of the reasons for the director's

determination that adequate and complete inspections have or have not been conducted. If the director determines that an adequate and complete inspection has not been made, he shall order an inspection. Any person who is or may be adversely affected by a decision not to inspect may request, in writing, the director to review informally an authorized representative's decision not to inspect or to take required enforcement action. The request shall include a statement of how the person is or may be adversely affected and why the decision merits review. The director shall conduct the review and inform the person, in writing, of the results of the review within thirty (30) days of the receipt of the request. *(Natural Resources Commission; 312 IAC 25-7-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3592, eff Dec 1, 2001)*

312 IAC 25-7-4 Availability of records

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 4. A copy of any record, report, inspection material, or any other information obtained under sections 1 through 3 of this rule, this section, and sections 5 through 10 of this rule other than material designated as confidential, shall be available to the public at the department and at the office of the county recorder in the appropriate county or counties, for the period of time commencing upon issuance until five (5) years after all bonds have been released for the related permitted operation. *(Natural Resources Commission; 312 IAC 25-7-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3592, eff Dec 1, 2001)*

312 IAC 25-7-5 State enforcement; cessation orders

Authority: IC 14-34-2-1
Affected: IC 14-34-3-1; IC 14-34-10-2; IC 14-34-15-6

Sec. 5. (a) An authorized representative of the director, when conducting an inspection, shall immediately order a cessation of the portion of the surface coal mining and reclamation operation relevant to the condition, practice, or violation if he finds any condition or practice, or any violation of IC 14-34-10-2, or any condition of a permit required by IC 14-34-3-1, or any condition of an exploration approval which condition, practice, or violation:

(1) creates an imminent danger to the health or safety of the public; or

(2) is causing, or can reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.

(b) An authorized representative of the director shall immediately issue a cessation order to any person who does not hold a valid permit to conduct those operations.

(c) Where the director or the director's authorized representative finds that the ordered cessation of surface coal mining operation, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources in the most expeditious manner physically possible, the director shall, in addition to the cessation order, impose affirmative obligations on the permittee requiring him to take whatever steps the director deems necessary to abate the imminent danger or the significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(d) When, on the basis of an inspection, an authorized representative of the director, for good cause shown and upon written findings, finds that a notice of violation has been issued under section 6(a) of this rule 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, he or she shall immediately order a cessation of coal exploration or that portion of the surface mining and reclamation operations relevant to the violation.

(e) A cessation order issued under this section shall require the person to whom it is issued to take the steps necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(f) A cessation order issued under this section shall be in 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.

(g) An authorized representative of the director 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.

(h) An authorized representative of the director shall terminate a cessation order by written notice to the person to whom the order was issued:

(1) for a cessation order under subsection (a) or (b), when the authorized representative of the director determines that the condition or practice resulting in the issuance of the cessation order has been abated; or

(2) for a cessation order under subsection (d), when steps necessary to abate the violations covered by the order have been completed.

(i) Termination of a cessation order shall not prohibit the director from assessing civil penalties for those violations under sections 13 through 21 of this rule.

(j) The order shall remain in effect until the condition or practice resulting in the issuance of the cessation order has been abated or until vacated, modified, or terminated in writing by an authorized representative of the director or until the order expires under IC 14-34-15-6(d).

(k) Within thirty (30) days after a cessation order is issued under this section or under 30 CFR 843.11 (except where a stay of the cessation order is in effect), the permittee shall provide the director with written documentation to establish one (1) of the following:

(1) There has been no change since the immediately proceeding submittal of information under 312 IAC 25-4-17.

(2) The information required from a permit application by 312 IAC 25-4-17, if not previously submitted.

(3) The information needed to correct or update (to the date of the cessation order) information previously submitted and corrections or updates as needed.

(l) The director, within sixty (60) days after issuing a cessation order, shall notify, in writing, any person who has been identified under subsection (k) and 312 IAC 25-4-17 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller. *(Natural Resources Commission; 312 IAC 25-7-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3592, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-7-6 State enforcement; notices of violation

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34-1; IC 14-34-3-1

Sec. 6. (a) An authorized representative of the director shall issue a notice of violation if, on the basis of an inspection, he finds a violation of IC 14-34-1, this article, or any condition of a permit issued under IC 14-34-3-1 that does not create an imminent danger or harm for which a cessation order must be issued under section 5 of this rule.

(b) A notice of violation issued under this section shall be in writing, signed by the director or inspector who issues it, and shall set forth with particularity the following:

(1) The nature of the violation.

(2) The remedial action required, that may include interim steps.

(3) A reasonable time for abatement.

(4) A reasonable description of the portion of the surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the director may extend the time set for abatement if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety (90) days from the date of issuance, except upon a showing by the permittee that, despite extraordinary efforts by the permittee, it is not possible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances in subsection (f). An extended abatement date under this section shall not be granted when the permittee's failure or inability to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the person in completing the remedial action required.

(d) If the person to whom the notice was issued fails to meet the time set for abatement, or for accomplishment of an interim step, the authorized representative shall issue a cessation order under section 5(b) of this rule.

(e) An authorized representative of the director shall terminate each part of a notice of violation by written notice to the person to whom it was issued when he determines that such part of the violation listed in the notice of violation has been abated. This determination may be made by conducting an investigation to confirm the abatement or by accepting the information obtained from

an appropriate governmental agency that the violation has been abated. Termination shall not affect the right of the director to assess civil penalties for those violations under sections 13 through 21 of this rule, concerning civil penalties.

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

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but such permit or approval has not been or will not be issued within ninety (90) days after a valid permit expires or is required for reasons not within the control of the person issued the notice of violation.

(2) Where there is a valid judicial or administrative order precluding abatement within ninety (90) days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy.

(3) Where the permittee cannot abate within ninety (90) days due to a labor strike.

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

(A) would cause more environmental harm than it would prevent; or

(B) requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(g) Whenever an abatement time in excess of ninety (90) days is permitted, interim abatement measures may be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in subsection (f) exist, the permittee may request the authorized representative to grant an abatement period exceeding ninety (90) days. The authorized representative shall not grant such an abatement period without the concurrence of the director or his or her designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of subsections (c) and (f). In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review that document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determinations made under subsection (h) shall be in writing and shall contain a right of appeal under IC 4-21.5.

(j) No extension granted under subsection (h) may exceed ninety (90) days in length. Where the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of any such extension, the permittee may request a further extension in accordance with subsection (h). *(Natural Resources Commission; 312 IAC 25-7-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3593, eff Dec 1, 2001)*

312 IAC 25-7-7 Suspension or revocation of permits

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34-15-7

Sec. 7. (a) Except as provided in subsection (d), when the director determines that a pattern of violations of any requirements of IC 14-34, this article, or any permit conditions required by IC 14-34 exists or has existed, and that the violations were caused by the permittee willfully, or through unwarranted failure to comply with those requirements or conditions, the director shall issue an order to the permittee requiring the permittee to show cause why the permit and a right to mine under IC 14-34 should not be suspended or revoked and provide an opportunity for a public hearing under IC 4-21.5 and 312 IAC 3. Willful violation means an act or omission that violates IC 14-34, this article, or any permit condition required by IC 14-34 committed by a person who intends the result that actually occurs. Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of IC 14-34 or this article, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or IC 14-34, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee unless the permittee establishes that they were acts of deliberate sabotage.

(b) The director may determine that a pattern of violations exists or has existed based on two (2) or more inspections of the permit area within any twelve (12) month period after considering the circumstances, including the following:

(1) The number of violations, cited on more than one (1) occasion of the same or related requirements of IC 14-34, this article, or the permit.

(2) The number of violations, cited on more than one (1) occasion, of different requirements of IC 14-34, this article, or the permit.

(3) The extent to which the violations were isolated departures from lawful conduct.

(c) The director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of IC 14-34, this article, or the permit during three (3) or more inspections of the permit area within any twelve (12) month period. If, after such review, the director determines that a pattern of violations exists or has existed, the director shall issue a show cause order as provided in 312 IAC 3-1-5(b).

(d) The director may decline to issue a show cause order or may dismiss an outstanding order if the director finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to dismiss the show cause order. The basis for this finding shall be fully explained and documented in the records of the case.

(e) If a hearing is requested on a show cause order under 312 IAC 3-1-5(d) through 312 IAC 3-1-5(h), the director shall give thirty (30) days written notice of the date, time, and place of the hearing to all interested persons and shall post the notice in the Indianapolis office and the field office of the division of reclamation. If practicable, the director shall also publish the notice, including a brief statement of the procedure for intervention, in a newspaper of general circulation published in the county in which the surface coal mining and reclamation operation is located. As used in this section, "published" refers to the process of composing, issuing, and distributing the newspaper to the public and does not refer only to the mechanical work of printing. If the operation lies within more than one (1) county, the advertisement shall be placed in one (1) newspaper in each county where the operation lies.

(f) If the commission suspends or revokes a permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall do either of the following:

(1) If the permit and the right to mine under IC 14-34 are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(2) If the permit and the right to mine under IC 14-34 are revoked, complete reclamation within the time specified in the order. If reclamation is not completed within that time period, the permittee forfeits the applicable bond.

(g) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section and shall issue an order to show cause as appropriate. *(Natural Resources Commission; 312 IAC 25-7-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3594, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-7-8 State enforcement; service on permittee

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 8. (a) Any document issued under sections 5 through 7 of this rule, this section, and sections 9 through 12 of this rule shall be served on the permittee, the permittee's designated agent, or the individual who, based upon reasonable inquiry by the director or the director's authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the document, promptly after issuance, as follows:

(1) By tendering a copy at the mine office of the surface coal mining and reclamation operation to the permittee or the permittee's designated agent. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to subdivision (1), service may be made by sending a copy of the notice or order by certified mail to the permittee or the permittee's designated agent. Service shall be complete upon receipt of the mail and shall not be deemed incomplete because of refusal to accept.

(b) Designation by any permittee of an agent for service of notices and orders shall be made in writing to the director, and the name and usual location of the designated agent shall be posted on a bulletin board designated for that purpose at the mine office or site. *(Natural Resources Commission; 312 IAC 25-7-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3595, eff Dec 1, 2001)*

312 IAC 25-7-9 State enforcement; informal public hearing

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34

Sec. 9. (a) Except as provided in subsections (b) through (c), a notice of violation or cessation order that requires cessation of all or any portion of the surface coal mining operation expressly or by necessary implication shall expire within thirty (30) days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the director and the person to whom the notice or order was issued. Expiration of a notice or order shall not affect the director's right to assess civil penalties for the violations mentioned in the notice or order under sections 13 through 21 of this rule (civil penalties).

(b) A notice of violation or cessation order shall not expire as provided in subsection (a), if the condition, practice, or violation in question has been abated or if the informal public hearing has been waived.

(c) The director shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) the person to whom the notice or order was issued; and

(2) any person who filed a report which led to that notice or order.

(d) The director shall also post notice of the hearing at the offices of the division of reclamation and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) An informal public hearing held under this section shall be conducted by a representative of the director who may accept oral or written arguments or any other relevant information. IC 4-21.5 does not apply to an informal public hearing held under this section.

(f) Within five (5) days after the close of an informal public hearing, the director shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(1) the person to whom the notice or order was issued; and

(2) any person who filed a report that led to the notice or order.

(g) The granting or waiver of an informal public hearing under this section does not affect the right of any person to administrative review under IC 4-21.5 and IC 14-34. *(Natural Resources Commission; 312 IAC 25-7-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3595, eff Dec 1, 2001)*

312 IAC 25-7-10 State enforcement; formal review of citations

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34-15-9

Sec. 10. (a) A person issued a notice of violation or cessation order under sections 5 through 6 of this rule, or a person having an interest that is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request in writing, a review of that action and request a hearing under IC 4-21.5 within thirty (30) days of issuance of that notice or order or of its modification, vacation, or termination. The filing of an application for review and request for a hearing shall not operate as a stay of any notice or order, or of any modification, termination, or vacation of the notice or order. The director may consolidate this hearing with a hearing requested pursuant to section 20 of this rule.

(b) Pending completion of the hearing, the operator may file with the director a written request for temporary relief pursuant to IC 14-34-15-9(e). *(Natural Resources Commission; 312 IAC 25-7-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3596, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-7-11 State enforcement; inability to comply

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 11. (a) No cessation order or notice of violation issued under section 5 or 6 of this rule may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violation exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under sections 13 through 21 of this rule and of the duration of the suspension of a permit under section 7 of this rule. *(Natural Resources Commission; 312 IAC 25-7-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3596, eff Dec 1, 2001)*

312 IAC 25-7-12 State enforcement; injunctive relief

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12. The director may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate relief from a court of competent jurisdiction whenever that person or his or her agent:

(1) violates fails, or refuses to comply with any order or decision of the commission, department, or director under IC 14-34;
(2) interferes with, hinders, or delays the director or an authorized representative of the director in carrying out the director's duties under IC 14-34;
(3) refuses to admit an authorized representative of the director to a mine;
(4) refuses to permit inspection of a mine by an authorized representative of the director;
(5) refuses to furnish any information or report required to be furnished by IC 14-34 or this article;
(6) refuses to permit access to or copying of any required records; or
(7) refuses to permit inspection of monitoring equipment.

(Natural Resources Commission; 312 IAC 25-7-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3596, eff Dec 1, 2001)

312 IAC 25-7-13 Civil penalties; when assessed

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 13. (a) The director shall assess a penalty for a violation that leads to the issuance of a cessation order.

(b) The director shall assess a penalty for each notice of violation, if the violation is assigned thirty-one (31) points or more under the point system described in section 15 of this rule.

(c) The director may assess a penalty for each notice of violation assigned thirty (30) points or less under the point system described in section 15 of this rule. In determining whether to assess a penalty, the director shall consider the factors listed in section 14 of this rule.

(d) The director shall assess a penalty of five thousand dollars ($5,000) for each day a person conducts a surface coal mining operation for which no permit has been approved by the director. Provided, however, where a permit has been approved by the director but surface coal mining operations are conducted beyond the permit boundary, or in portions of the permit area as to which permit conditions remain to be satisfied, the penalty shall be determined as provided in subsections (a) through (c). *(Natural Resources Commission; 312 IAC 25-7-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3597, eff Dec 1, 2001)*

312 IAC 25-7-14 Civil penalties; penalty determinations

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 14. The director shall determine the amount of penalty, if any, to be assessed by considering the following factors, and assigning points to each factor as follows:

(1) The director shall assign up to thirty (30) points based on the permittee's history of previous violations at the particular coal exploration or surface coal mining operation during the preceding twelve (12) months. One (1) point shall be assigned for each past violation contained in a notice of violation. Five (5) points shall be assigned for each violation contained in a cessation order. Points shall be assigned as follows:
    (A) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired.
    (B) No violation for which the notice or order has been vacated shall be counted.
    (C) Each violation shall be counted without regard to whether it led to a civil penalty assessment.
(2) The director shall consider the seriousness of a violation, including any irreparable harm to the environment and hazard to the health or safety of the public, and shall assign up to thirty (30) points based on the seriousness of the violation as follows:
    (A) The director shall assign up to fifteen (15) points based on the probability of the occurrence of the event that a

violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence	Points
none	0
insignificant	1 to 4
unlikely	5 to 9
likely	10 to 14
occurred	15

(B) The director shall assign up to fifteen (15) points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(i) If the damage or impact that the violated standard is designed to prevent would remain within the coal exploration or permit area, the director shall assign zero (0) to seven (7) points, depending on the duration and extent of the damage or impact.

(ii) If the damage or impact that the violated standard is designed to prevent would extend outside the coal exploration or permit area, the director shall assign eight (8) to fifteen (15) points, depending on the duration and extent of the damage or impact.

(C) In the case of a violation of an administrative requirement, the director shall in lieu of subdivisions (A) and (B), assign up to fifteen (15) points for seriousness based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence requirements are as follows:

(A) The director shall assign up to twenty-five (25) points based on the permittee's degree of fault in the occurrence of or failure to correct a violation. Points shall be assigned as follows:

(i) A violation that occurs through no fault shall be assigned zero (0) points.

(ii) A violation that is caused by negligence shall be assigned twelve (12) points or less depending on the degree of fault.

(iii) A violation that occurs through recklessness shall be assigned thirteen (13) to nineteen (19) points, depending on the degree of fault.

(iv) A violation that is caused by knowing or intentional conduct shall be assigned twenty (20) to twenty-five (25) points depending on the degree of fault.

(B) In determining the degree of fault involved in a violation and the number of points to be assigned, the following definitions apply:

(i) "Knowing or intentional conduct" means conduct engaged in either with the conscious objective of causing the harm that results from the conduct or with the awareness that such harm will very probably be caused by that conduct.

(ii) "No fault" means an inadvertent violation that was unavoidable by the exercise of reasonable care.

(iii) "Negligence" means the failure of a permittee to prevent the occurrence of any violation due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation due to indifference, lack of diligence or lack of reasonable care.

(iv) "Recklessness" means evidence of a plain, conscious, and unjustifiable disregard of harm that might result from the conduct.

(C) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the permittee to whom the notice or order was issued unless the permittee establishes that they were acts of deliberate sabotage.

(4) The director shall assign up to negative thirty (-30) points reducing any assessment of a violation if the permittee achieves rapid compliance after notification of violation, or if the permittee uses extraordinary measures in abating the violation. Points shall be assigned as follows:

(A) Rapid compliance as follows:

(i) If the violation is abated immediately or within up to thirty percent (30%) of the time set for abatement, including extensions of time for abatement, the director shall assign negative twenty-one (-21) points.

(ii) If the violation is abated within thirty-one percent (31%) to forty percent (40%) of the time set for abatement, the director shall assign negative eighteen (-18) points.

(iii) If the violation is abated within forty-one percent (41%) to fifty percent (50%) of the time set for abatement, the director shall assign negative fifteen (-15) points.

(iv) If the violation is abated within fifty-one percent (51%) to sixty percent (60%) of the time set for abatement, the director shall assign negative twelve (-12) points.
(v) If the violation is abated within sixty-one percent (61%) to seventy percent (70%) of the time set for abatement, the director shall assign negative nine (-9) points.
(vi) If the violation is abated within seventy-one percent (71%) to eighty percent (80%) of the time set for abatement, the director shall assign negative six (-6) points.
(vii) If the violation is abated within eighty-one percent (81%) to ninety percent (90%) of the time set for abatement, the director shall assign negative three (-3) points.
(viii) If the violation is abated within ninety-one percent (91%) to one hundred percent (100%) of the time set for abatement, the director shall assign zero (0) points.
(ix) If the permittee demonstrates that the time set for abatement, including extensions of time for abatement, is less than the time reasonably required under all of the circumstances, then the percentages set forth in items (i) through (viii) shall be applied to the time reasonably required for abatement of the violation rather than the time set for abatement in the notice or order.

(B) Extraordinary measures as follows:
(i) If the permittee uses additional equipment, or pulls equipment off production, or uses additional person hours, and interrupts normal operations, the director shall assign negative nine (-9) points.
(ii) If the permittee uses additional equipment, or pulls equipment off production, or uses additional person hours, but normal coal production operations are not interrupted, the director shall assign negative six (-6) points.
(iii) If the permittee does not use extraordinary abatement measures, the director shall assign zero (0) points.
(iv) If the permittee performs more extensive abatement measures than those specified in the notice or order and if those measures result in an increased level of environmental protection or restoration, the director shall assign, in addition to any negative points assigned under clause (A) and items (i) through (iii) from negative one (-1) to negative ten (-10) points; provided that the total number of points deducted for good faith shall not be greater than thirty (30).

(Natural Resources Commission; 312 IAC 25-7-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3597, eff Dec 1, 2001)

312 IAC 25-7-15 Civil penalties; penalty determination; point system

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 15. Except as provided in sections 13(d) and 16(b) of this rule, the director shall determine the amount of civil penalty, by converting the total number of points assigned under section 14 of this rule to a dollar amount, according to the following schedule:

Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320

17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700

68	4,800
69	4,900
70 and above	5,000

(Natural Resources Commission; 312 IAC 25-7-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3599, eff Dec 1, 2001)

312 IAC 25-7-16 Civil penalties; assessment of separate violations

Authority: IC 14-34-2-1
Affected: IC 14-34-15-9; IC 14-34-17-1

Sec. 16. (a) The director may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the director shall consider the factors listed in section 14 of this rule and may consider the extent to which the operator gained any economic benefit as a result of a failure to comply.

(b) Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than seven hundred fifty dollars ($750) shall be assessed for each day during which such failure continues, for a maximum of thirty (30) days except that, if the operator initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(1) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under IC 14-34-15-9(e) after a determination that the operator will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the administrative law judge issues a final order with respect to the violation in question.

(2) If the operator initiates review proceedings under IC 14-34-17-1 with respect to the violation in which the obligations to abate are suspended by the court, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

(Natural Resources Commission; 312 IAC 25-7-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3599, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)

312 IAC 25-7-17 Civil penalties; waiver

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 17. The director, upon the director's own initiative or upon written request, may waive the civil penalty for a notice of violation, in whole or in part, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty would be demonstrably unjust. However, the director shall not waive the penalty on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of IC 14-34, this article, or any condition of a permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case. *(Natural Resources Commission; 312 IAC 25-7-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3600, eff Dec 1, 2001)*

312 IAC 25-7-18 Civil penalties; procedures for assessment

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 18. (a) If the operator believes there are special circumstances surrounding a violation for which a notice of violation or cessation order has been issued, and the operator wants the director to consider this information before making an initial determination of the amount of civil penalty as provided in subsection (b), the operator may, within fifteen (15) days of service of the notice or order, submit written information about the violation to the director and to the inspector who issued the notice of violation or cessation order. This information should relate to the four (4) factors set forth in section 14 of this rule. The director shall consider any information so submitted in determining the amount of the penalty. Whether or not the operator submits information under this subsection, the operator may, pursuant to section 19 of this rule, request an assessment conference to review the assessment that the director will serve under subsection (b).

(b) The director shall serve a copy of the proposed assessment and a statement of the basis for the proposed penalty, including an evaluation of the four (4) factors set forth in section 14 of this rule, on the operator by certified mail within thirty (30) days of the issuance of the notice or order.

(1) If the mail is offered at the address of the person set forth in the entrance sign, or at any address at which that person is in fact located, and if he or she refuses to accept delivery of or to collect such mail, the requirements of this subsection shall be deemed to have been complied with upon such tender.

(2) Failure by the director to serve any proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed does the following:

(A) Proves actual prejudice as a result of the delay.

(B) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless an assessment conference according to section 19 of this rule has been requested, the director shall review and reassess any penalty if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment. The director shall serve a copy of any such reassessment and a statement of the basis for the reassessment in the manner provided in subsection (b) within thirty (30) days after the date the violation is abated. *(Natural Resources Commission; 312 IAC 25-7-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3600, eff Dec 1, 2001)*

312 IAC 25-7-19 Civil penalties; procedures for assessment conference

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34

Sec. 19. (a) The director shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the operator, if the request is mailed within fifteen (15) days from the date the proposed assessment or reassessment is received.

(b) Requirements for an assessment conference are as follows:

(1) The director shall assign a conference officer to hold the assessment conference. The assessment conference shall be held within sixty (60) days from the date of issuance of the provided assessment or the end of the abatement period, whichever is later. Failure by the director to hold an assessment conference within sixty (60) days is not a basis for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay. An assessment conference is not governed by IC 4-21.5.

(2) The director shall post notice of the time and place of the conference at the office closest to the mine at least five (5) days prior to the conference. Any person shall have the right to attend and participate in the conference.

(3) The conference officer shall consider all information relevant to the violation. Within thirty (30) days after the conference is held, the conference officer shall either:

(A) settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the director and by the operator; or

(B) affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed penalty assessment of more than twenty-five percent (25%) and more than five hundred dollars ($500) shall not be final and binding on the director until approved by the director or a designee of the director.

(c) The conference officer shall promptly serve the operator with a notice of an action under this section as provided in section 18(b) of this rule. The reasons for the conference officer's action shall be:

(1) fully documented in the file; and

(2) mailed to the operator.

(d) Requirements for settlement agreements are as follows:

(1) If a settlement agreement is entered, the operator waives all rights to further review of the violation or penalty in question, except as otherwise expressly provided in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the director within thirty (30) days after the date of signing, the director may enforce the agreement or rescind it and proceed according to subsection (b)(3)(B) within thirty (30) days from the date of the rescission.

(Natural Resources Commission; 312 IAC 25-7-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3600, eff Dec 1, 2001)

312 IAC 25-7-20 Civil penalties; hearing request
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 20. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the director or the director's authorized delegate (to be held in escrow as provided in section 21(b) of this rule) within thirty (30) days from receipt of the proposed assessment, reassessment, or the conference officer's action. The director, or the director's authorized delegate, shall hold the payment in escrow pending completion of the administrative and judicial review process. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under section 10 of this rule. *(Natural Resources Commission; 312 IAC 25-7-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3601, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2470, eff Jan 1, 2005)*

312 IAC 25-7-21 Civil penalties; final assessment and payment
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 21. (a) If the operator fails to request a hearing as provided in section 20 of this rule, the proposed assessment shall become a final order of the director and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to subsection (c), the escrow funds shall be transferred to the director in payment of the penalty and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under sections 13 through 20 of this rule and this section, the director shall, within thirty (30) days of receipt of the order, refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of six percent (6%), or at the prevailing United States Department of the Treasury rate, whichever is greater.

(d) Where final review results in an order increasing the penalty, the operator shall pay the difference to the director within thirty (30) days after the order is mailed to such operator. *(Natural Resources Commission; 312 IAC 25-7-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3601, eff Dec 1, 2001)*

312 IAC 25-7-22 Termination of jurisdiction
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 22. (a) The director may terminate jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when the director determines, in writing, that, under the:

(1) interim program, all requirements imposed under 30 CFR Subchapter B, pursuant to IC 14-34, have been successfully completed; or

(2) permanent program, all requirements imposed under this article have been successfully completed or, where a performance bond was required, the director has made a final decision in accordance with 312 IAC 25-5-16 to release the performance bond fully.

(b) Following a termination of jurisdiction under subsection (a), the director shall reassert jurisdiction under the applicable regulatory program over a site if it is demonstrated that the bond release or written determination referred to in subsection (a) was based upon fraud, collusion, or misrepresentation of a material fact. *(Natural Resources Commission; 312 IAC 25-7-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001)*

312 IAC 25-7-23 Individual civil penalties; definitions
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 23. (a) The definitions in this section apply to sections 24 through 27 of this rule.

(b) "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.

(c) "Violation, failure, or refusal" means either of the following:

(1) A violation of a condition of a permit issued under IC 14-34 or this article.

(2) A failure or refusal to comply with any order issued under IC 14-34 or this article, or any order incorporated in a final decision issued by the department under IC 14-34 or this article, except an order incorporated in a decision issued under IC 14-34 or this article.

(d) "Willfully" means that an individual acted in both of the following manners:

(1) Intentionally, voluntarily, or consciously.

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

(Natural Resources Commission; 312 IAC 25-7-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001)

312 IAC 25-7-24 Individual civil penalties; timing for assessment

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 24. (a) Except as provided in subsection (b), the director 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 as defined in section 23(c) of this rule.

(b) The director 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 to the corporate permittee for the violation, and the cessation order has remained unabated for thirty (30) days. *(Natural Resources Commission; 312 IAC 25-7-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001)*

312 IAC 25-7-25 Individual civil penalties; amount

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 25. (a) When determining the amount of an individual civil penalty assessed under section 24 of this rule, the director shall consider the criteria specified in IC 14-34, including each of the following:

(1) The individual's history of authorizing, ordering, or carrying out previous violations, failures, or refusals, as defined in section 23(c) of this rule, at the particular surface coal mining operation.

(2) The seriousness of the violation, failure, or refusal as defined in section 23(c) of this rule (as indicated by the extent of damage and the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public.

(3) The individual charged makes an affirmative demonstration of good faith in attempting to achieve rapid compliance after notice of the violation, failure, or refusal as defined in section 23(c) of this rule.

(b) The penalty shall not exceed five thousand dollars ($5,000) for each violation. Each day of a continuing violation may be deemed a separate violation, and the director may assess a separate individual civil penalty for each day the violation, failure, or refusal, as defined under section 23(c) of this rule, continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the director, until abatement or compliance is achieved. *(Natural Resources Commission; 312 IAC 25-7-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001)*

312 IAC 25-7-26 Individual civil penalties; procedure for assessment

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 26. (a) The director shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment which shall include each of the following:

(1) A narrative explanation of the reasons for the penalty.
(2) The amount to be assessed.
(3) A copy of any underlying notice of violation and cessation order.
(b) The notice of proposed individual civil penalty assessment shall become a final order of the director thirty (30) days after service upon the individual unless the individual completes one (1) of the following:
(1) The individual files within thirty (30) days of service of the notice of proposed individual civil penalty assessment a petition for review with the Indiana Natural Resources Commission, Division of Hearings, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, (Phone: 317-232-4699).
(2) The director and the individual or responsible corporate permittee agree within thirty (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) For purposes of this section, service is sufficient if it would satisfy the requirements of sections 8 through 18 of this rule. *(Natural Resources Commission; 312 IAC 25-7-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3603, eff Dec 1, 2001)*

312 IAC 25-7-27 Individual civil penalties; payment of penalty
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 27. (a) If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.
(b) If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with section 26 of this rule, the penalty shall be due upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty.
(c) Where the director 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 named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the director stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn. *(Natural Resources Commission; 312 IAC 25-7-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3603, eff Dec 1, 2001)*

Rule 8. Restriction on Financial Interest of State Employees

312 IAC 25-8-1 Responsibility of director
Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 1. (a) The director shall do the following:
(1) Provide advice, assistance, and guidance to all employees required to file statements pursuant to section 4(a) of this rule.
(2) Review, within required time limits, the statement of employment and financial interests and supplements filed by each employee to determine if the employee has correctly identified those listed employment and financial interests that constitute a direct or indirect financial interest in an underground or surface coal mining operation.
(3) Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the director of the Office of Surface Mining (OSM) who is responsible for initiating action to impose the penalties of IC 14-34.
(4) Certify on each Statement of Employment and Financial Interests that:
(A) a review has been made;
(B) prohibited financial interests have been resolved; and
(C) no other prohibited interests have been identified from the statement.
(5) Submit to the director of OSM such data that may be requested to enable preparation of the required annual report to Congress.
(6) Submit to the director of OSM the listings of positions as required by section 4(b)(1) and 4(b)(3) of this rule.
(7) Furnish a blank statement forty-five (45) days in advance of the filing date established by 30 CFR 705.13(a) to each employee required to file a statement.

(8) Inform annually each employee required to file a statement of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) Employees performing any duty or function under IC 14-34 shall:

(1) have no direct or indirect financial interest in coal mining operations;

(2) file a fully completed Statement of Employment and Financial Interest upon entrance to duty and annually thereafter on the specified filing date; and

(3) comply with all directives issued by the director who is responsible for approving the statement.

(c) Commission members and advisory council members shall abstain from voting in decision-making functions that directly affect a company in which that member has a direct or indirect financial interest. *(Natural Resources Commission; 312 IAC 25-8-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3603, eff Dec 1, 2001)*

312 IAC 25-8-2 Definitions

Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 2. The following definitions apply throughout this rule:

(1) "Act" means IC 14-34.

(2) "Coal mining operation" means the business of:

(A) developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite; or

(B) reclaiming the areas upon which such activities occur.

(3) "Direct financial interest" means:

(A) ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings; and

(B) 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.

(4) "Employee" means any person employed by the department or the commission who performs any function or duty under IC 14-34.

(5) "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 inlaws, 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 functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

(6) "Office" means the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(7) "Performing any function or duty under IC 14-34" means those decisions or actions, which, if performed or not performed by an employee, affect the programs under IC 14-34.

(8) "Prohibited financial interests" means any direct or indirect financial interest in any coal mining operation. *(Natural Resources Commission; 312 IAC 25-8-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3604, eff Dec 1, 2001)*

312 IAC 25-8-3 Penalties

Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 3. (a) Any person who knowingly violates IC 14-34-2-6 commits a Class A misdemeanor.

(b) Any person who knowingly violates IC 14-34-2-6 may also be punished under Section 417(g) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87.

(c) IC 14-34-2-6 makes compliance with the financial interest requirements a condition of employment for employees of the department who perform any functions or duties under IC 14-34.

(d) An employee who fails to file the required statement will be considered in violation of the intended employment provisions of IC 14-34-2-6 and will be subject to removal from his or her position. *(Natural Resources Commission; 312 IAC 25-8-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3604, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

312 IAC 25-8-4 Filing requirements
Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 4. (a) Any employee who performs any function or duty under IC 14-34 or this article is required to file a statement of employment and financial interests. Members of a board (including the commission or advisory board) established under Indiana statute or rule to represent multiple interests, who perform a function or duty under IC 14-34 or this article, must file a statement of employment and financial interests.

(b) An employee who occupies a position that has been determined by the director not to involve performance of any function or duty under IC 14-34 or this article is not required to file a statement. The director shall:

(1) prepare a list of those positions within the department's division of reclamation that do not involve performance of any functions or duties under IC 14-34 or this article;

(2) prepare a list of the divisions within the department that have no employees performing functions or duties under IC 14-34 or this article; and

(3) for divisions within the department that have some employees performing functions or duties under IC 14-34 or this article, prepare a list of those positions required to file a statement of employment and financial interests.

(c) For subsection (b)(1) and (b)(2), only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of IC 14-34-2-6 or this section.

(d) For subsection (b)(3), only those employees who are employed in a listed organizational unit or who occupy a listed position will be required to file the statement of employment and financial interests.

(e) The director shall annually review and update these listings.

(f) The director shall submit the lists required in subsection (b) (or a certification that a revision is not required) to the director of the Office of Surface Mining (OSM) by no later than September 30 of each year. Each annual updated listing must be submitted to the director of OSM and must contain a written justification for inclusion of the positions listed in subsection (b)(1) and (b)(2) and exclusion of the positions not listed in subsection (b)(3).

(g) The director may revise these listings at any time if it is determined such revision is required to carry out the purpose of the law or the regulations. Revisions are effective upon notification to the incumbent of an affected position. *(Natural Resources Commission; 312 IAC 25-8-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3605, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183)*

312 IAC 25-8-5 Filing dates
Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 5. (a) Employees and members of a board (including the commission or advisory board) representing multiple interests performing functions or duties under IC 14-34 shall file annually on February 1 of each year or at such other dates as may be agreed to by the director of the Office of Surface Mining.

(b) New employees and new members of a board (including the commission or advisory board) representing multiple interests hired, appointed, or transferred to perform functions or duties under IC 14-34 or this article will be required to file at the time of entrance to duty.

(c) New employees and new members of a board (including the commission or advisory board) representing multiple interests are not required to file an annual statement on the subsequent annual filing date if this date occurs within two (2) months after their initial statement was filed. *(Natural Resources Commission; 312 IAC 25-8-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3605, eff Dec 1, 2001)*

312 IAC 25-8-6 Filing locations
Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 6. (a) The annual statement required of the director shall be filed with the director of the Office of Surface Mining.

(b) All other employees and members of a board (including the commission or advisory board) representing multiple interests

as provided in section 4(a) of this rule shall file their statement with the director. *(Natural Resources Commission; 312 IAC 25-8-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3605, eff Dec 1, 2001)*

312 IAC 25-8-7 Reporting requirements

Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 7. (a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on OSM Form 705-1 as provided by the office.

(b) The statement will set forth the following information regarding any financial interest:

(1) Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment. The employee, his or her spouse, or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one that is unlikely to be changed as a result of action taken by the commission.

(2) Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements, including trusts. An employee is not required to report mutual funds, investment clubs, or regulated investment companies not specializing in underground and surface coal mining operations.

(3) Ownership, lease, royalty, or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Requirements for employee certification, and, if applicable, a listing of exceptions are as follows:

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge:

(A) none of the listed financial interests represent an interest in an underground or surface coal mining operation, except as specifically identified and described as exceptions by the employee as part of the certificate; and

(B) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to:

(A) have complete knowledge of his or her personal involvement in business enterprises, such as a sole proprietorship and partnership, his or her outside employment, and the outside employment of the spouse and other covered relatives; and

(B) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(A) list the financial interest;

(B) show the number of shares, estimated value, or annual income of the financial interests; and

(C) include any other information that the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in section 3 of this rule, and Section 417(g) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87.

(Natural Resources Commission; 312 IAC 25-8-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3606, eff Dec 1, 2001)

312 IAC 25-8-8 Resolving prohibited interests; actions by the director

Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 8. (a) If an employee has a prohibited financial interest, the director shall promptly advise the employee that remedial

action that will resolve the prohibited interest is required within ninety (90) days.

(b) Remedial action may include:

(1) reassignment of the employee to a position that performs no function or duty under IC 14-34;

(2) divestiture of the prohibited financial interest; or

(3) other appropriate action that either eliminates the prohibited interest or eliminates the situation that creates the conflict.

(c) If, ninety (90) days after an employee is notified to take remedial action, that employee is not in compliance with the requirements of IC 14-34 and this article, the director shall report the facts of the situation to the director of the Office of Surface Mining who shall determine whether action to impose the penalties prescribed by IC 14-34 should be initiated. The report to the director of the Office of Surface Mining shall include the original or a certified true copy of the employee's statement and any other information pertinent to the state director of the Office of Surface Mining's determination, including a statement of actions being taken at the time the report is made. *(Natural Resources Commission; 312 IAC 25-8-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3606, eff Dec 1, 2001)*

312 IAC 25-8-9 Gifts and gratuities

Authority: IC 14-34-1-3
Affected: IC 14-34-2-6

Sec. 9. (a) Except as provided in subsection (b), employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a coal company that:

(1) conducts or is seeking to conduct, operations or activities that are regulated by the department; or

(2) has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions in subsection (a) do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned that are the motivating factors. An employee may accept:

(1) food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(2) unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted state policies. *(Natural Resources Commission; 312 IAC 25-8-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3607, eff Dec 1, 2001)*

Rule 9. Training, Examination, and Certification of Blasters

312 IAC 25-9-1 Applicability

Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 1. This rule establishes the requirements and procedures for the training, examination, and certification of a person engaging in or directly responsible for the use of explosives in surface coal mining and reclamation operations. *(Natural Resources Commission; 312 IAC 25-9-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3607, eff Dec 1, 2001)*

312 IAC 25-9-2 Purpose

Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 2. The objective of this rule is to establish a training and certification program that ensures that all blasts detonated in surface coal mining and reclamation operations are designed, prepared, supervised, and detonated by trained and competent persons who meet the requirements of this article as they relate to blasting in surface coal mining and reclamation operations. *(Natural Resources Commission; 312 IAC 25-9-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3607, eff Dec 1, 2001)*

312 IAC 25-9-3 Training

Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 3. (a) A person seeking to become a certified blaster shall receive the training specified in subsection (c).

(b) A person who is not seeking certification and is assigned to a blasting crew or assists in the use of explosives must receive direction and on-the-job training from a certified blaster.

(c) The director will approve qualified persons or institutions who will be responsible for conducting the department's approved course to train a person seeking to become a certified blaster. A person assigned to a blasting crew or assists in the use of explosives may attend the training courses for certified blasters. The training course for certified blasters shall provide for training and discuss practical applications of the following:

(1) Explosives, including the following:
  (A) Selection of the type of explosive to be used.
  (B) Determination of the properties of explosives that will produce desired results at an acceptable level of risk.
  (C) Handling, transportation, and storage.
(2) Blast designs, including the following:
  (A) Geologic and topographic considerations.
  (B) Design of a blast hole, with critical dimensions.
  (C) Pattern design, field layout, and timing of blast holes.
  (D) Field applications.
(3) Loading blast holes, including priming and boostering.
(4) Initiation systems and blasting machines.
(5) Blasting vibrations, airblast, and flyrock, including the following:
  (A) Monitoring techniques.
  (B) Methods to control adverse effects.
(6) Secondary blasting applications.
(7) Current federal and state rules applicable to the use of explosives.
(8) Blast records.
(9) Schedules.
(10) Preblasting surveys, including the following:
  (A) Availability.
  (B) Coverage.
  (C) Use of in blast design.
(11) Blast-plan requirements.
(12) Certification and training.
(13) Signs, warning signals, and site control.
(14) Unpredictable hazards, including the following:
  (A) Lightning.
  (B) Stray currents.
  (C) Radio waves.
  (D) Misfires.
(15) Any other subjects the director may from time to time require.

(d) A person who is not seeking certification, but is assigned to a blasting crew or assists in the use of explosives, shall either attend the training courses approved by the director or shall receive on the job training from his or her employer or the permittee.

(1) A person assigned to a blasting crew or who assists in the use of explosives shall receive training in the following topics:
  (A) Handling, transportation, and storage of explosives.
  (B) Loading of blast holes.
  (C) Signs, warning signals, and site access control.
(2) Documentation of a person's training shall be maintained at the mine site and made available to the director or the director's authorized representative upon request.

(Natural Resources Commission; 312 IAC 25-9-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3607, eff Dec 1, 2001)

312 IAC 25-9-4 Application for certification
Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 4. (a) An application for certification as a certified blaster shall be submitted to the department.
(b) An application for certification shall be, in writing, on forms furnished by the department.
(c) An application shall be completed in accordance with the instructions provided with the application.
(d) An application form is incomplete if the form does not contain all required information or if the form contains incorrect information. The applicant will be given notice of the deficiencies, and, if the required information is not provided by the applicant within thirty (30) days of the notice, the application will be terminated.
(e) The director or an authorized representative may verify the information shown on the application directly with educational institutions, other certification boards, and personal references, and may verify the work experience with the employer.
(f) If an application has been terminated, the person will not be considered for certification. A new application may be submitted at any time by complying with subsections (b) and (c). *(Natural Resources Commission; 312 IAC 25-9-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3608, eff Dec 1, 2001)*

312 IAC 25-9-5 Examinations
Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 5. (a) The competence of an applicant for certification as a certified blaster will be evaluated by reviewing and verifying the following:
(1) The ability of the applicant to be directly responsible for the use of explosives in surface coal mining and reclamation operations through a written examination in the technical aspects of blasting and applicable Indiana and federal laws and regulations governing the storage, use, and transportation of explosives.
(2) The practical field experience specified in subsection (c).
(b) An applicant for registration as a certified blaster shall be examined in the topics set forth in section 3(c) of this rule.
(c) Admission to examination will be denied or deferred if the applicant lacks the necessary training required by section 3 of this rule or a minimum of one (1) year practical field experience. An applicant denied or deferred admission will be so notified, in writing, stating any reason for such denial or deferral.
(d) An examination notice will be sent to all applicants admitted for examination approximately six (6) weeks in advance of the regularly scheduled examination. This notice will establish the time and place of the examination and other instructions pertinent to the examination. Failure to appear for an examination will result in termination of the application unless the director, for good reason, extends the time for appearing.
(e) Only pass-fail grades will be issued. A passing grade will be issued to applicants who correctly respond to at least seventy percent (70%) of the questions contained on the written examination.
(f) Any applicant may review his or her examination answer sheets in the department's Jasonville office at any time during normal working hours after the applicant has received notice of the examination results. The answer sheets will be retained in the department's office for a period of one (1) year after the examination date after which time they will be destroyed.
(g) An applicant failing an examination may retake the examination two (2) times without reapplying. An applicant failing the examination three (3) times must retake the certified blaster training course. An applicant must notify the director, in writing, within sixty (60) days from the date of notice of failing of their intention to retake the examination. The applicant will be scheduled for reexamination at the next scheduled examination. Failure to notify the director will cause the application to be terminated, and the applicant must reapply for examination under section 4 of this rule. *(Natural Resources Commission; 312 IAC 25-9-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3608, eff Dec 1, 2001; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2714, eff Nov 1, 2004)*

312 IAC 25-9-6 Comity registration
Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 6. (a) Any person who holds a valid certificate of registration as a certified blaster in another state may be granted

certification as a certified blaster without examination as specified in section 5 of this rule, if:

(1) the director finds that the standard for certification in the other state at the time such certificate was issued was in accordance with a blaster certification program approved pursuant to 30 U.S.C. 1253 and 30 CFR 732.13, and such standard is not lower than the standard required by this article;

(2) reciprocal certification privileges are granted to certified blasters registered in Indiana; and

(3) the person has made application for certification on forms furnished by the department.

(b) When the director finds that the basis for certification in the other state of registration was at a standard lower than the standard required by this article, the applicant will be required to take the training and examination as specified in sections 3 and 5 of this rule, respectively. *(Natural Resources Commission; 312 IAC 25-9-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3609, eff Dec 1, 2001)*

312 IAC 25-9-7 Certification

Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 7. (a) When an applicant is accepted for certification, either by passing the examination or by comity, the department will provide notice to the applicant of the director's action. The certification will be valid for three (3) years.

(b) The director will assign a certification number to the registrant, and establish the date of certification that will appear on the certificate. As soon as practicable thereafter, the director will issue a certificate.

(c) The director is authorized to issue, upon request of a registrant a duplicate or replacement certificate. Such new certificate shall be assigned the original certificate number with the word "duplicate" inserted above the number.

(d) Certified blasters shall take every reasonable precaution to protect their certificate from loss, theft, or unauthorized duplication. Any such occurrence shall be immediately reported to the department.

(e) Certified blasters shall maintain their certificate at the mine site and shall immediately exhibit the certificate to any authorized representative of the director upon request.

(f) Certification as required by this article shall not be assigned or transferred to any other individual.

(g) A certified blaster shall not delegate their responsibility to any individual who is not a certified blaster. *(Natural Resources Commission; 312 IAC 25-9-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3609, eff Dec 1, 2001)*

312 IAC 25-9-8 Renewal

Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 8. (a) A certified blaster must obtain renewal of the certification every three (3) years. A request for renewal of the certification shall be in writing on a form furnished by the department. The request for renewal must be received by the department not later than thirty (30) days prior to expiration of the certificate.

(b) The renewal will be approved if the certified blaster:

(1) has worked at least twelve (12) months of the preceding thirty-six (36) months as a certified blaster;

(2) is not in violation of section 9 of this rule; and

(3) has obtained a minimum of fifteen (15) hours of additional training in the topics found in section 3 of this rule. Each certified blaster must provide documentation that fifteen (15) hours of additional training has been achieved. The training must be approved by the department.

(c) When the certification is not renewed for more than one (1) year after expiration, the blaster must retake the examination under section 5 of this rule and demonstrate completion of fifteen (15) hours of additional training in the previous thirty-six (36) months. When the certification is not renewed for five (5) years after expiration, the certification will not be renewable. An application shall be submitted to the department in the event that the individual desires to again be certified, and the individual shall be considered as a new applicant.

(d) A renewal notice will be sent to each registrant not less than two (2) months prior to the expiration date of the certification.

(e) All renewal notices and other communications will be sent to the last address given by the registrant to the department. A failure of the certified blaster to receive a renewal notice under this subsection does not relieve the certified blaster of the obligation to obtain a renewal of the certification as required under subsection (a). *(Natural Resources Commission; 312 IAC 25-9-8;*

filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2714, eff Nov 1, 2004)

312 IAC 25-9-9 Suspension or revocation of certification

Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 4-21.5; IC 14-34-12-1

Sec. 9. (a) The commission, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall, suspend or revoke the certification of a blaster for any of the following reasons:

(1) Noncompliance with any lawful order of the director or the commission.

(2) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.

(3) Violation of any provision of the Indiana or federal laws or regulations dealing with the acquisition, transportation, storage, or use of explosives.

(4) Providing false information or a misrepresentation to obtain certification.

(5) Violation of section 7(d), 7(e), 7(f), or 7(g) of this rule.

(b) Upon notice of a revocation, the certified blaster shall immediately surrender the revoked certificate to the commission.

(c) All hearings conducted by the commission concerning suspension or revocation of certification must be held under IC 4-21.5.

(d) The commission, for good and sufficient reasons, may reissue a certificate to any person whose certification has been revoked. The person must apply for certification pursuant to section 4 of this rule for reinstatement. *(Natural Resources Commission; 312 IAC 25-9-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183)*

Rule 10. Reclamation Division Fund; Reclamation Fee

312 IAC 25-10-1 Scope

Authority: IC 14-34-2-1
Affected: IC 14-34-13

Sec. 1. This rule sets forth the requirements for payment of the reclamation fee under IC 14-34-13. *(Natural Resources Commission; 312 IAC 25-10-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183)*

312 IAC 25-10-2 Reclamation fee

Authority: IC 14-34-2-1
Affected: IC 14-34-13

Sec. 2. (a) Until July 1, 1995, all operators of coal mining operations subject to IC 14-34 and this article shall pay to the department for deposit in the natural resources reclamation division fund a reclamation fee of five and one-half cents ($0.055) on each ton of coal produced for sale, transfer, or use.

(b) Until July 1, 1995, all operators of underground coal mining operations with no support facilities located within Indiana, but producing coal from reserves located within Indiana, shall pay to the department for deposit in the natural resources reclamation division fund a reclamation fee of one cent ($0.01) per ton of coal produced from Indiana.

(c) The fee shall be determined based upon the weight of the coal at the time of initial bona fide sale, transfer of ownership, or use by the operator. The initial bona fide sale and the weight of the coal shall be determined as follows:

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed or removed from a reclaimed coal refuse deposit.

(2) The weight of each ton of coal shall be determined by the actual gross weight of the coal and the following:

(A) Impurities that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator (excluding excess moisture for which a reduction has been taken under subsection (d)) shall not be deducted from the gross weight.

(B) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage and the basis for the

clean coal transaction.

(C) Insufficient records shall subject the operator to fees based on raw tonnage data.

(d) The operator may take a calculated weight reduction to allow for the weight of excess moisture in the coal subject to the following requirements:

(1) The operator shall demonstrate through competent evidence that there is a reasonable basis for determining the existence and amount of excess moisture. Documentation shall be updated as necessary to establish the continuing validity of the excess moisture content allowance taken by the operator.

(2) Inherent and total moisture shall be tested using standard laboratory analyses.

(3) The operator shall test for variations in inherent moisture amounts for different seams of coal produced that are blended prior to the initial bona fide sale, transfer of ownership, or use of the coal by the operator.

(4) The operator shall retain the results of all laboratory analyses and all other relevant documentation (including the operator's books and records) for not less than six (6) years after the date of each analysis.

(5) If the director disallows all or part of the moisture allowance, the operator shall submit the additional fee.

(Natural Resources Commission; 312 IAC 25-10-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001)

312 IAC 25-10-3 Fee payment

Authority: IC 14-34-2-1
Affected: IC 14-34-13

Sec. 3. (a) Each operator shall pay the reclamation fee concurrently with the federal reclamation fee under the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232) and not later than thirty (30) days after the end of each calendar quarter beginning with the third calendar quarter of 1991.

(b) Each operator shall use a coal production and reclamation fee report form (Form DOR-1), as set out in the Division of Reclamation, Reclamation Fee Handbook, revised August 1991, developed by the director to report the tonnage of coal produced and to calculate the reclamation fee due during the applicable calendar quarter.

(c) Each quarterly report of coal production shall be accompanied by a copy of OSM-1 and a check or money order made payable to the department in the amount of the reclamation fee owed for that quarter. Payments shall be made in person or mailed to the Jasonville office of the division of reclamation. Wire transfer, if available, can be used for payment of the reclamation fee, and the operator shall submit a copy of Form DOR-1 within five (5) days of the transfer.

(d) Operators failing to submit the required report or to make reclamation fee payments by the thirtieth day after the end of the calendar quarter will be subject to a notice of violation and civil penalty assessments. Failure to comply with the terms of the notice of violation will result in the issuance of a cessation order for the failure to abate the notice of violation and an order to show cause why the permit should not be suspended or revoked. Delinquent payments made shall be credited against the civil penalty first, if assessed, and the reclamation fee second. Daily civil penalty amounts may be assessed. *(Natural Resources Commission; 312 IAC 25-10-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3611, eff Dec 1, 2001)*

312 IAC 25-10-4 Production records

Authority: IC 14-34-2-1
Affected: IC 5-14-3-4; IC 14-34-13

Sec. 4. (a) Any person engaging in or conducting a coal mining operation shall maintain, on a current basis, records that contain at least the following information:

(1) The tons of coal produced, bought, sold, or transferred.

(2) The amount received per ton.

(3) The name of the person to whom the coal was sold or transferred.

(4) The date of each sale or transfer.

(5) The tons of coal used by the operator and the date of consumption.

(6) The tons of coal stockpiled or inventoried that are not classified as sold for federal reclamation fee purposes under 30 CFR 870.

(b) Authorized representatives of the director shall have access to records of any coal mining operation for the purpose of determining compliance of that or any other operation with this rule.

(c) Any person engaging in or conducting a coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by authorized representatives of the director. The director may use audit information collected by the federal Office of Surface Mining for the same reporting period in lieu of a department audit of records. All information, including copies of any records, shall be deemed confidential and not available for public inspection or review unless specifically required by a state or federal statute or ordered by a court under the rules of discovery if that information is excepted from public disclosure under the provisions of IC 5-14-3-4 or IC 14-34; however, such information may be made available to the federal Office of Surface Mining.

(d) Any persons engaging in or conducting a coal mining operation shall maintain books and records for a period of six (6) years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) If an operator of a coal mining operation fails to maintain or make available the records as required in this rule, the director shall make an estimate of fee liability under this rule through the use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due. Following a director's estimate of fee liability, an operator may request the director to revise the estimate based upon information provided by the operator. The operator has the burden of demonstrating that the estimate is incorrect by providing documentation acceptable to the director and comparable to the information required under subsection (a). *(Natural Resources Commission; 312 IAC 25-10-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3611, eff Dec 1, 2001)*

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