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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #03-93

DIGEST

Amends 312 IAC 25 that assists in the administration of IC 14-34 (sometimes referred to as the "Indiana Surface Control and Reclamation Act" or "Indiana SMCRA"), which governs surface coal mining and reclamation activities. Makes numerous changes to help assure conformance with state and federal law including new definitions for "land eligible for remining" and "unanticipated event or condition", references to ponds would be modified to describe siltation structures, designated regulations of the Mine Safety and Health Administration would be incorporated by reference, refuse piles would be addressed with greater specificity, references to the former Soil Conservation Service are updated to identify the Natural Resources Conservation Service, new standards address consultation with the Secretary of Agriculture, permits on prime farmland, permits on lands eligible for remining, certifications by a permittee who seeks a bond release, the development of baselines for hydrologic information, and the frequency of inspections of abandoned sites, provides for the confidentiality of information and location of archaeological resources on public and Indian lands, specifies that, in addition to the director of the department of natural resources, the Secretary of the Interior may perform mine inspections. Makes numerous other substantive and technical changes. 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 published in the Indiana Register.

312 IAC 25-1-8
312 IAC 25-1-75.5
312 IAC 25-1-155.5
312 IAC 25-4-17
312 IAC 25-4-45
312 IAC 25-4-49
312 IAC 25-4-87
312 IAC 25-4-102
312 IAC 25-4-105.5
312 IAC 25-4-113
312 IAC 25-4-114
312 IAC 25-4-115
312 IAC 25-4-118
312 IAC 25-5-7
312 IAC 25-5-16
312 IAC 25-6-17
312 IAC 25-6-20
312 IAC 25-6-23
312 IAC 25-6-25
312 IAC 25-6-66
312 IAC 25-6-81
312 IAC 25-6-84
312 IAC 25-6-130
312 IAC 25-7-1
312 IAC 25-7-20

SECTION 1. 312 IAC 25-1-8 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 8. **(a)** "Affected area" means ~~a~~ **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) ~~An~~ **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) ~~An~~ **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) ~~A site~~ **Any area** covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas.

(6) ~~An~~ **Any** area upon which are sited structures, facilities, or other **property** material on the surface resulting from, or ~~incidental~~ **incident** to, surface coal mining **and** reclamation operations.

(7) The area located above underground workings. ~~of a mine.~~

(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)*

SECTION 2. 312 IAC 25-1-75.5 IS ADDED TO READ AS FOLLOWS:

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)*

SECTION 3. 312 IAC 25-1-155.5 IS ADDED TO READ AS FOLLOWS:

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)*

SECTION 4. 312 IAC 25-4-17 IS AMENDED TO READ AS FOLLOWS:

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 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.

(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))*

SECTION 5. 312 IAC 25-4-45 IS AMENDED TO READ AS FOLLOWS:

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 thickness of soil horizons, **total depth,** pH, buffer pH, phosphorous, potassium, percent coarse fragments and 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 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.), ~~and~~ 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)

SECTION 6. 312 IAC 25-4-49 IS AMENDED TO READ AS FOLLOWS:

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, ~~or~~ 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.

~~(d)~~ **(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.

~~(c)~~ **(g)** If **the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:**

(1) ~~the~~ structure is twenty (20) feet or higher;

(2) ~~the~~ drainage area above the structure is one (1) square mile or larger; or

(3) ~~the~~ 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. ~~If necessary to protect the health or safety of persons, 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 25-4-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3457, eff Dec 1, 2001)*

SECTION 7. 312 IAC 25-4-87 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-87 Underground mining permit applications; reclamation plan for siltation structures, impoundments, dams, embankments, and refuse piles

Authority: IC 14-34-2-1

Affected: IC 14-34

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, ~~or~~ 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.

~~(d)~~ **(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.

~~(c)~~ **(g)** If **the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:**

(1) ~~the~~ structure is twenty (20) feet or higher;

(2) ~~the~~ drainage area above the structure is one (1) square mile or larger; or

(3) ~~the~~ 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)*

SECTION 8. 312 IAC 25-4-102 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-102 Special categories of mining; prime farmland

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34; 30 CFR 785.17

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 ~~Soil~~ **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 ~~Soil~~ **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 15-6-139 through 312 IAC 15-6-143 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)

SECTION 9. 312 IAC 25-4-105.5 IS ADDED TO READ AS FOLLOWS:

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)*

SECTION 10. 312 IAC 25-4-113 IS AMENDED TO READ AS FOLLOWS:

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 ~~which~~ **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.

~~(f)~~ **(g)** A person who opposes or seeks disclosure of information ~~which~~ **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)*

SECTION 11. 312 IAC 25-4-114 IS AMENDED TO READ AS FOLLOWS:

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 form 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)

SECTION 12. 312 IAC 25-4-115 IS AMENDED TO READ AS FOLLOWS:

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) ~~not within an area~~ 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) ~~not within an area~~ 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 ~~archaeology~~ **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)*

SECTION 13. 312 IAC 25-4-118 IS AMENDED TO READ AS FOLLOWS:

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 ~~following~~ 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 ~~section~~ **sections** 17(c) and 58(a)(4) of this rule; or

(B) if not previously submitted, the information required from a permit applicant by ~~section~~ **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)

SECTION 14. 312 IAC 25-5-7 IS AMENDED TO READ AS FOLLOWS:

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)*

SECTION 15. 312 IAC 25-5-16 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-5-16 Performance bond release; requirements

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-27; IC 14-34-10-2; 30 CFR 800.40

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.

~~(b)~~ **(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 (f). If a public hearing is held under subsection (f), an administrative law judge shall enter an order under IC 4-21.5-3-27 within thirty (30) days after the hearing is completed.

~~(c)~~ **(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.

~~(d)~~ **(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.

~~(e)~~ **(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.

~~(f)~~ **(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.

~~(g)~~ **(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.

~~(h)~~ **(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)*

SECTION 16. 312 IAC 25-6-17 IS AMENDED TO READ AS FOLLOWS:

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 ~~or qualified registered professional land surveyor~~ 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 ~~which~~ **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 ~~sedimentation pond~~ **siltation structure** meeting the spillway requirements of this section is as follows:

(A) For a ~~sedimentation pond~~ **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.

~~(B)~~ **(C)** For a ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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. 6 (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)

SECTION 17. 312 IAC 25-6-20 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-20 Surface mining; hydrologic balance; permanent and temporary impoundments

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

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 ~~section.~~ **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) ~~located where failure would be expected to cause loss of life or serious property damage or impounding coal mine waste~~ 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) ~~and located where failure would not be expected to cause loss of life or serious property damage,~~ 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.

~~(ii)~~ **(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 ~~or qualified registered professional land surveyor~~ 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 ~~and/or~~ **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. (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 ~~or qualified registered professional land surveyor~~ 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 ~~subsection,~~ **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 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)*

SECTION 18. 312 IAC 25-6-23 IS AMENDED TO READ AS FOLLOWS:

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 ~~which~~ **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 comply; 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)*

SECTION 19. 312 IAC 25-6-25 IS AMENDED TO READ AS FOLLOWS:

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 ~~pursuant to a lawful order of an agency or court under IC 14-25-4 or another state water rights law,~~ 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. ~~Water replacement rights are not determined by this article.~~ **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.** *(Natural Resources Commission; 312 IAC 25-6-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001)*

SECTION 20. 312 IAC 25-6-66 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-66 Surface mining; primary roads
Authority: IC 14-34-2-1
Affected: IC 14-34

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 ~~meet one (1) of the following:~~

~~(A)~~ **have** a minimum static safety factor of one and three-tenths (1.3)

~~(B) A maximum slope not in excess of 3h:1v (thirty-three and one-third percent (33⅓%).~~

~~(C)~~ **and** be designed in compliance with the following design standards:

~~(i)~~ **(A)** The embankment foundation area shall be cleared of all organic material, and the entire foundation surface shall be scarified.

~~(ii)~~ **(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.

~~(iii)~~ **(C)** The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

~~(iv)~~ **(D)** The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

~~(v)~~ **(E)** The moisture content of the fill material shall be sufficient to secure proper compaction.

~~(vi)~~ **(F)** The side slopes of the embankment shall be no steeper than 2h:1v.

~~(vii)~~ **(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.

~~(viii)~~ **(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)

SECTION 21. 312 IAC 25-6-81 IS AMENDED TO READ AS FOLLOWS:

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 ~~13~~ **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 ~~or qualified professional land surveyor~~ 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 ~~sedimentation pond~~ **siltation structure** meeting the spillway requirements of this section is as follows:

(A) For a ~~sedimentation pond~~ **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.

~~(B)~~ **(C)** For a ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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 ~~sedimentation pond~~ **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)

SECTION 22. 312 IAC 25-6-84 IS AMENDED TO READ AS FOLLOWS:

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 ~~his~~ **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) ~~located where failure would be expected to cause loss of life or serious property damage, or impounding coal mine waste~~ 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), ~~and located where failure would not be expected to cause loss of life or serious property damage,~~ **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) ~~and located where failure would not be expected to cause loss of life or serious property damage,~~ 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.

~~(ii)~~ **(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 ~~or qualified registered professional land surveyor~~ 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 ~~and/or~~ **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 ~~or qualified registered professional land surveyor~~ 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 ~~subsection,~~ **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)*

SECTION 23. 312 IAC 25-6-130 IS AMENDED TO READ AS FOLLOWS:

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 ~~a maximum slope not in excess of 3h:1v (thirty-three and one-third percent (33⅓%)).~~ **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.

~~(E)~~ **(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)

SECTION 24. 312 IAC 25-7-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-7-1 Inspections of sites

Authority: IC 14-34-2-1

Affected: IC 14-34-15; IC 14-34-16-7; IC 14-34-16-8

Sec. 1. (a) The director shall conduct inspections as follows:

(1) Except as provided in ~~subdivision (2)~~ **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) As frequently as necessary to monitor for changes of environmental conditions or operational status on each abandoned site. Before ceasing to perform inspections of an abandoned site as provided in subdivision (1), the director shall complete both of the following:~~

~~(A) Evaluate the environmental conditions and operational status of the site.~~

~~(B) Document, in writing, the inspection frequency necessary to comply with the requirements of this subdivision. The documentation shall include the reasons for selecting the inspection frequency.~~

~~(3)~~ **(2)** Without notice to the person being inspected or any agents or employees of that person except for necessary on-site meetings.

~~(4)~~ **(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 14-34-11-6.~~ **IC 14-34-15-6.**

(e) An on-site investigation conducted under subsection (d) is not an additional partial inspection ~~nor~~ **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 subject 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.

~~(f)~~ **(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) ~~the~~ **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)

SECTION 25. 312 IAC 25-7-20 IS AMENDED TO READ AS FOLLOWS:

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, ~~or~~ reassessment, or ~~fifteen (15) days from the date of service of~~ 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)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 27, 2003 at 12:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room D, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning surface coal mining and reclamation activities. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission