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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #06-67

DIGEST

Amends 312 IAC 25-6-143 to allow commercial forest resources on reclaimed prime farmland provided soil productivity is demonstrated according to soil productivity standards. Amends 312 IAC 25-4-102 to require an applicant that proposes to establish commercial forest resources on prime farmland to submit for approval a commercial forest planting plan, commercial forest management plan, and documentation of landowner consent. 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.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

These revisions were initiated at the request of the coal industry in consultation with the Indiana Coal Council. The new rule creates an option, which is not presently available, for an operator to establish commercial forest resources on prime farmland. Costs associated with the option are substantially the same as present requirements for the establishment and management of other crops established on prime farmland. The Department of Natural Resources estimates that no new cost or requirement will be imposed on small businesses by these proposed amendments. The Natural Resources Commission has the authority to adopt rules under IC 14-10-2-4.

312 IAC 25-4-102

312 IAC 25-6-143

SECTION 1. 312 IAC 25-4-102 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 14-10-2-4; 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:

(A) the area for which the determination is requested; and

(B) the area previously affected by surface coal mining and reclamation operations.

(2) Information concerning the contractual coal sales commitments that existed before August 4, 1977, for the mining operation.

(3) Maps and other documents that identify the location and extent of the applicant's surface and mineral rights control for all properties within the area upon which the determination is requested and whether the applicant:

(A) acquired the rights:

(i) before August 4, 1977; or

(B) acquired the rights (ii) after August 3, 1977; or

(C) (B) does not control the rights currently.

(4) Mining plans, maps, or other documents prepared before August 4, 1977, that identify the area intended to be mined by the existing operations.

(5) Maps or other documents identifying the extent of coal exploration activity performed by the applicant in the area before

August 4, 1977.

(6) Copies of any other permits issued to the applicant by governmental agencies before August 4, 1977, with respect to those operations upon those lands for which this determination is sought.

(7) The legal and financial commitments made by the applicant in connection with the mining operation as of August 3, 1977, with respect to those lands for which this determination is requested.

(8) Any other relevant information.

(b) In making the determination required under subsection (a), no one (1) or group of factors is controlling. The determination shall be made by the director based upon all relevant factors of the particular surface coal mining operation for which the permit and determination is sought. The determination applies:

(1) to all subsequent and continuous permits for the existing surface coal mining operation; or

(2) until the director determines the operations have permanently ceased.

(c) The requirements of subsection (d) apply to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. Subsection (d) does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date.

(d) If land within the proposed permit area is identified as prime farmland under section 39 or 80 of this rule, the applicant shall submit a plan for the mining and restoration of the land. Each plan must include the following:

(1) A soil survey of the permit area under the standards of the National Cooperative Soil Survey and under the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States Natural Resources Conservation Service, including, but not limited to:

(A) soil horizon depths;

(B) pH; and

(C) the range of soil densities;

for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state conservationist, United States Natural Resources Conservation Service. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technical capability to restore the prime farmland within the permit area to the soil reconstruction standards of 312 IAC 25-6-139 through 312 IAC 25-6-143.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of soil under 312 IAC 25-6-139 through 312 IAC 25-6-143.

(3) The location of areas to be used for the separate stockpiling of the soil and a plan for soil stabilization before redistribution.

(4) Applicable:

(A) agricultural school studies;

(B) scientific data from comparable areas; or

(C) similar documentation;

that supports the use of suitable material other than the A horizon, B horizon, or C horizon to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.

(5) A plan describing the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime during the period from completion of regrading until release of the performance bond under 312 IAC 25-5. Proper adjustments must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) A demonstration based on:

(A) soil surveys;

(B) scientific data; or

(C) standard agronomic practices;

that the applicant using the proposed method of reclamation has the capability, within a reasonable time, to achieve equivalent or higher levels of yield after mining as existed before mining.

(7) Current estimated level of yields under high levels of management of prime farmland.

(8) If the applicant proposes to establish commercial forest resources on the prime farmland, the plan must also include the following:

(A) A commercial forest planting plan that shall include the following:

- (i) A stocking rate.**
- (ii) A plan for replanting as needed.**
- (B) A commercial forest management plan.**
- (C) Documentation of landowner consent.**

(e) Before any permit is issued for areas that include prime farmland, the director shall consult with the state conservationist of the Natural Resources Conservation Service. The state conservationist shall do the following:

- (1) Provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (d).
- (2) Suggest revisions resulting in more complete and adequate reconstruction if the state conservationist considers the soil reconstruction methods to be inadequate. The state conservationist has fifteen (15) days after consultation with the director to respond.
- (3) Provide to the director a list of prime farmland soils **and** their:
 - (A)** location;
 - (B)** physical and chemical characteristics;
 - (C)** crop yields; and
 - (D)** associated data necessary to support adequate prime farmland descriptions.
- (4) Assist the director in determining the adequacy of all soil surveys required in subsection (d)(1) through (d)(3).

(f) A permit for the mining and reclamation of prime farmland may be granted by the director if the director finds, in writing, upon the basis of a complete application, the following:

- (1) The approved proposed postmining land use of prime farmland will be cropland.
- (2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (d), after consideration of any revisions to that plan suggested by the state conservationist under subsection (e).
- (3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.
- (4) The proposed operations will be conducted in compliance with the requirements of 312 IAC 25-6-139 through 312 IAC 25-6-143 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.
- (5) The aggregate total prime farmland acreage shall not be decreased from that which existed ~~prior to~~ **before** mining. Waterbodies, if any, to be constructed during mining and reclamation must be located within the postreclamation nonprime farmland portions of the permit area. The:
 - (A)** creation of any waterbody must be approved by the director; and ~~the~~
 - (B)** consent of all affected property owners within the permit area shall be obtained.

(Natural Resources Commission; 312 IAC 25-4-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3481, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2449, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)

SECTION 2. 312 IAC 25-6-143 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-143 Prime farmland; special performance standards; revegetation and restoration of soil productivity

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

Affected: IC 14-34

Sec. 143. (a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

- (b) Prime farmland soil productivity shall be restored under the following provisions:
 - (1) Measurement of soil productivity shall be initiated within ten (10) years after completion of the soil replacement.
 - (2) Soil productivity on the mined and reclaimed prime farmland area shall be measured using one (1) of the following methods:
 - (A)** Growing crops on a representative sample of the area using the test plot standards of section 60 of this rule.
 - (B)** Growing crops on all of the area.
 - (3) The:
 - (A)** sampling techniques contained in section 60 of this rule; and ~~the~~
 - (B)** statistical methodology contained in section 61 of this rule;
 shall be used to measure soil productivity.

(4) The period for measuring crop production (yield) shall be at least three (3) crop years before the release of the operator's performance bond.

(5) The level of management applied during the measurement period shall be the same as the level of management used for nonmined prime farmland in the surrounding area.

(6) Restoration of soil productivity is achieved when the yield during the measurement period equals or exceeds one hundred percent (100%) of the success standard found at section 59(c) of this rule for any three (3) years of the responsibility period. One hundred percent (100%) of the success standard must be met with a ninety percent (90%) statistical confidence level, in other words, a one (1) sided test with a 0.10 alpha error. Where reference crops are used for demonstrating productivity, the yield comparisons shall be established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(7) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crops requiring the greatest rooting depth shall be chosen as one (1) of the reference crops.

(8) The reference crop yield may be adjusted for factors including:

- (A) disease;
- (B) weather;
- (C) tillage management;
- (D) pests; and
- (E) seed or plant selection;

specified in section 59(c) of this rule.

(9) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

- (A) the selective husbandry practices can be expected to continue as part of the postmining land use; or
- (B) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(10) Selective husbandry practices that may be approved under subdivision (9) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

- (A) Disease, pest, and vermin control.
- (B) Repair of rills and gullies.
- (C) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(11) The selection of reference areas shall be guided by section 59 of this rule. The selection of an approved reference area must be accomplished with concurrence by the Soil Conservation Service of the United States Department of Agriculture.

(c) Commercial forest resources may be established on reclaimed prime farmland provided that productivity is demonstrated by subsection (b) and as follows:

(1) The director has approved a forest planting plan and forest management plan in consultation with the division of forestry.

(2) Landowner consent has been obtained.

(3) Forest compatible, permanent ground cover sufficient to control erosion is established and all erosion areas must be repaired or otherwise stabilized.

(4) The required soil replacement depth is verified and approved before trees are planted.

(5) Soil productivity shall be demonstrated under subsection (b).

(Natural Resources Commission; 312 IAC 25-6-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001)

SECTION 3. SECTIONS 1 and 2 of this document take effect 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.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 2, 2006 at 11:00 a.m., at the Department of Natural Resources, Division of Reclamation Field Office, located on State Road 48 approximately one mile west of Jasonville city limits, Jasonville, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments to 312 IAC 25-6-143 to allow commercial forest resources on reclaimed prime farmland provided soil productivity is demonstrated according to soil productivity standards and 312

IAC 25-4-102 to require an applicant that proposes to establish commercial forest resources on prime farmland to submit for approval a commercial forest planting plan, commercial forest management plan, and documentation of landowner consent.

The Department of Natural Resources estimates that no requirements or costs will be imposed upon a regulated entity by these proposed amendments.

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.

Rick Cockrum
Chairman
Natural Resources Commission