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## TITLE 312 NATURAL RESOURCES COMMISSION

### **Proposed Rule** LSA Document #06-68

#### DIGEST

Amends 312 IAC 25-1-57, 312 IAC 25-4-87, 312 IAC 25-5-16, 312 IAC 25-6-20, 312 IAC 25-6-66, and 312 IAC 25-7-1, which assist in the administration of IC 14-34 (sometimes referred to as the “Indiana Surface Control and Reclamation Act” or “Indiana SMCRA”) that governs surface coal mining and reclamation activities, to make numerous changes to help assure conformance with state and federal law, to qualify approved reclamation projects financed with less than 50 percent federal funding as “government-financed construction”, to remove requirements for submittal of an application for water impoundments of less than 100-acre feet and exempt impoundments that are entirely contained within an incised structure from examination requirements, to add provisions allowing the director of the Department of Natural Resources to initiate an application for bond release and clarify the procedure for conducting informal conferences regarding a proposed bond release, to clarify requirements for construction or reconstruction of primary roads, and to clarify the definition of “abandoned site” as used in 312 IAC 25-7-1. 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**

This rule package contains a number of corrections necessary to maintaining consistency with the federal Surface Mining Control and Reclamation Act as required by 30 CFR 732. This package contains amendments required by the Office of Surface Mining (OSM) as well as two (2) revisions proposed by the department.

OSM, after conducting an informal review, indicates that the amendments meet federal standards. These amendments have been proposed following consultation with the Regulatory Affairs Committee of the Indiana Coal Council.

The Natural Resources Commission has the authority to adopt rules under IC 14-10-2-4. The new proposed rules are intended to modify its regulatory program to remain consistent with any mandatory changes to the federal Surface Mining Control and Reclamation Act. The Department of Natural Resources (DNR) estimates that no costs or requirements will be imposed on small businesses by these proposed amendments.

<b>312 IAC 25-1-57</b>	<b>312 IAC 25-6-20</b>
<b>312 IAC 25-4-87</b>	<b>312 IAC 25-6-66</b>
<b>312 IAC 25-5-16</b>	<b>312 IAC 25-7-1</b>

SECTION 1. 312 IAC 25-1-57 IS AMENDED TO READ AS FOLLOWS:

#### **312 IAC 25-1-57 “Government-financed construction” defined**

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

**Affected:** IC 14-34

Sec. 57. “Government-financed construction” means construction funded at fifty percent (50%) or more by funds appropriated from a government financing agency’s budget or obtained from general revenue bonds. **Government financing at less than fifty percent (50%) may qualify if the term does not mean construction is undertaken as an approved reclamation project under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and IC 14-34-19. Construction funded through:**

- (1) a government financing agency guarantee;
- (2) insurance;
- (3) a loan;
- (4) funds obtained through industrial revenue bonds or their equivalent; or
- (5) an in-kind payment;

**does not qualify as government-financed construction.** (*Natural Resources Commission; 312 IAC 25-1-57; filed Jun 21, 2001,*

2:53 p.m.: 24 IR 3410, eff Dec 1, 2001)

SECTION 2. 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 14-10-2-4; 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, embankment, or refuse pile within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

(B) Contain **the following:**

(i) A description, map, and cross section of the structure and its location.

~~(C) Contain~~ (ii) Preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

~~(D) Contain~~ (iii) A survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

~~(E) Contain~~ (iv) A certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as **the following:**

(i) Geology.

(ii) Land surveying. ~~and~~

(iii) Landscape architecture.

(B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe **the following:**

(i) The operation and maintenance requirements for each structure.

~~(D) Describe~~ (ii) The timetable and plans to remove each structure if appropriate.

~~(E)~~ (D) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a) and include a copy of the plans for design and construction approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-81. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-84.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of **the following:**

(1) 312 IAC 25-6-84.

(2) 30 CFR 77.216-1. ~~and~~

(3) 30 CFR 77.216-2.

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-98 through 312 IAC 25-6-102.

(e) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-98 and 312 IAC 25-6-106 through 312 IAC 25-6-108. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current, prudent engineering practice for **the following:**

- (A) Size of the dam or embankment.
- (B) Quantity of material to be impounded. ~~and~~
- (C) Subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of:

- (A) mudflows;
- (B) rock-debris falls; or
- (C) other landslides;

into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to, **the following:**

- (A) Strength parameters.
- (B) Pore pressures.
- (C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

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

- (1) structure is twenty (20) feet or higher;
- (2) drainage area above the structure is one (1) square mile or larger; or
- (3) volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, department of natural resources, and prior approval shall be obtained from the director before construction of the structure begins. ~~If necessary to protect the health or safety of persons or property or the environment, even though the volume of water impounded is less than one hundred (100) acre-feet, the director may require an application to be made.~~ *(Natural Resources Commission; 312 IAC 25-4-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3473, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2448, eff Jan 1, 2005)*

SECTION 3. 312 IAC 25-5-16 IS AMENDED TO READ AS FOLLOWS:

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

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

**Affected:** IC 4-21.5-3; 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 director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section.**

~~(b)~~ (c) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

~~(c)~~ (d) Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things, **the following:**

- (1) The degree of difficulty to complete any remaining reclamation.
- (2) Whether pollution of surface and subsurface water is occurring.
- (3) The probability pollution will continue. ~~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 **or informal conference** is held under subsection ~~(g)~~ **(i) or (j) or if a an informal conference is held under subsection (i) or public hearing is held under subsection (g); an administrative law judge shall enter an order under IC 4-21.5-3-27 (j)** within thirty (30) days after the **informal conference or public hearing** is completed.

~~(d)~~ (e) The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

- (1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.
- (2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to the stream flow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.
- (3) Phase III. The department may release the remaining bond only after **the:**
  - (A) ~~the~~ operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this article, or the permit; and
  - (B) ~~the~~ expiration of the period specified for operator responsibility in IC 14-34-10-2.

~~(e)~~ (f) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing:

- (1) stating the reasons for disapproval; and
- (2) recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

~~(f)~~ (g) If an application is made for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

~~(g)~~ Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release with the department within thirty (30) days after the last publication of the notice under subsection (a). If written objections are filed, and a hearing requested, the department

shall inform all the interested parties of the time and place of the hearing and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty (30) days of the request for such hearing (or, at the option of the person filing the hearing request, in Indianapolis or Jasonville). The date, time, and location of the hearing shall also be advertised by the department in a newspaper of general circulation in the locality of the mine for two (2) consecutive weeks:

**(h) A determination by the director under the provisions of this article or IC 14-34 is subject to review. An affected person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding.**

**(i) Upon receipt of written objection or a request for public hearing under subsection (a), the department, at the discretion of the director, may set a dispute under this section for an informal conference to resolve the objection. Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of any of the following:**

- (1) A permittee.**
- (2) A person who files objections.**
- (3) The department. or**
- (4) Another interested person.**

**(j) 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:

**(j) If objections filed under subsection (a) are not resolved through an informal conference, the department shall hold a public hearing within a reasonable time following the receipt of the request. The public hearing shall be conducted as follows:**

- (1) The date, time, and location of the public hearing shall be sent to the permittee and other parties to the hearing and advertised by the department in a newspaper of general circulation in the locality of the surface coal mining operation proposed for bond release at least two (2) weeks before the scheduled conference.**
- (2) The requirements of IC 4-21.5-3 shall not apply to the conduct of the public hearing. The public hearing shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the public hearing. An electronic or stenographic record shall be made unless waived by all parties. The record shall be maintained and shall be accessible to the parties of the public hearing until final release of the applicant's performance bond or other equivalent guarantee under this article.**
- (3) The department shall furnish all parties of the public hearing with the following:**
  - (A) The written findings of the director based on the public hearing.**
  - (B) The reasons for the finding.**
- (4) If all parties requesting the public hearing withdraw their request before the conference is held, the public hearing may be canceled.**

*(Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)*

SECTION 4. 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 14-10-2-4; 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:

- (A) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or an impoundment meeting the**
- (B) size or other criteria of 30 CFR 77.216(a);**

shall comply with the requirements of 30 CFR 77.216 and this rule.

(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-49 as designed to meet the requirements of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Impoundments must meet the following criteria for stability:

(A) An impoundment meeting the:

(i) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or ~~an impoundment meeting the~~

(ii) size or other criteria of 30 CFR 77.216(a);

shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the:

(i) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or ~~not meeting the~~

(ii) 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~~ **Instead** of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a) to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(5) Foundations and abutments for an impounding structure shall be:

(A) stable during all phases of construction and operation; and ~~shall be~~

(B) designed based on adequate and accurate information on the foundation conditions.

For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed, if necessary, to ensure stability.

(6) Slope protection shall be provided to protect against **the following**:

(A) Surface erosion at the site. ~~and protect against~~

(B) Sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

(i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(iii) For an impoundment not meeting the:

(AA) size or other criteria of 30 CFR 77.216(a); or ~~not meeting the~~

**(BB)** Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(A) Inspections shall be made:

(i) regularly during construction;

(ii) upon completion of construction; and

(iii) at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed or maintained, or both, as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

(i) Any appearance of instability, structural weakness, or other hazardous condition.

(ii) Depth and elevation of any impounded waters.

(iii) Existing storage capacity.

(iv) Any existing or required monitoring procedures and instrumentation.

(v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments:

(i) subject to 30 CFR 77.216; or

(ii) meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this clause following approval by the director:

(i) Impoundments that are completely incised.

**(ii) Impoundments that are entirely contained within an incised structure such that the incised structure would completely contain the waters of the impoundment should failure occur and failure would not create a potential threat to public health and safety or threaten significant environmental harm.**

~~(ii)~~ **(iii)** Water impounding structures that:

**(AA)** impound water to a design elevation ~~no~~ **not** more than five (5) feet above the upstream toe of the structure; and ~~that~~ **(BB)** can have a storage volume of not more than twenty (20) acre-feet;

provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director ~~prior to~~ **before** approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.

~~(iii)~~ **(iv)** Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

(AA) Sewage lagoons.

(BB) Landscaping ponds.

(CC) Pools or wetlands in replaced stream channels.

(DD) Existing impoundments not yet used to facilitate mining.

(EE) Ephemeral water bodies.

(FF) Active mining pits.

(GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundments will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for:

(A) agricultural;

(B) industrial;

(C) recreational; or

(D) domestic;

uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundments will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

(7) Final grading will provide for adequate safety and access for proposed water users.

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33 $\frac{1}{3}$ %) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to **do the following**:

(i) Place topsoil on the slope under section 11 of this rule. ~~and to~~

(ii) Revegetate the slope under sections 54 through 61 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of a surface coal mining operation. ~~In lieu~~ **Instead** of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

(1) meeting the:

(A) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60); or ~~meeting the~~

(B) size or other criteria of 30 CFR 77.216(a);

it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event or greater event as specified by the director; or

(2) not meeting the:

(A) size or other criteria of 30 CFR 77.216(a); or ~~not meeting the~~

(B) Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60);

it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments and surrounding areas and diversion ditches disturbed or created by construction shall be graded, fertilized, seeded, and mulched under sections 54 through 61 of this rule after the embankment is completed. The active upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas:

(1) in which the vegetation is not successful; or

(2) where rills and gullies develop;

shall be repaired and revegetated under sections 51 and 54 through 61 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall:

(1) be submitted to the director; and ~~shall~~

(2) comply with the requirements of this section.

Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. (*Natural Resources Commission; 312 IAC 25-6-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2458, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214*)

SECTION 5. 312 IAC 25-6-66 IS AMENDED TO READ AS FOLLOWS:

### **312 IAC 25-6-66 Surface mining; primary roads**

**Authority:** IC 14-10-2-4; 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 have a minimum static safety factor of one and three-tenths (1.3) ~~and or~~ be designed in compliance with the following design standards:

(A) The:

(i) embankment foundation area shall be cleared of all organic material; and ~~the~~

(ii) entire foundation surface shall be scarified.

(B) If the natural slope of the foundation as measured at right angles to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(C) The embankment fill material shall be free of **the following**:

(i) Sod.

(ii) Large roots. ~~and~~

(iii) Other large vegetative matter.

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

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

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

(G) Maximum fill height shall be twenty-five (25) feet as measured from natural ground at the downstream toe to the top of the embankment.

(H) Embankments shall:

(i) have a minimum top width of  $(h + 35)/5$ , where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment; and ~~shall~~

(ii) be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of perennial or intermittent streams that drain a watershed of at least one (1) square mile by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed, or reconstructed, and maintained to have adequate drainage control using structures such as, but not limited to, the following:

(i) Bridges.

(ii) Ditches.

(iii) Cross drains.

(iv) Ditch relief drains.

(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event or greater event as specified by the director as follows:

(i) Drainage pipes and culverts shall be installed as designed and maintained:

(AA) in a free and operating condition; and

(BB) to prevent or control erosion at inlets and outlets.

(ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(iii) Culverts shall be installed and maintained to sustain the following:

(AA) The vertical soil pressure.

(BB) The passive resistance of the foundation.

(CC) The weight of vehicles using the road.

(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with applicable provisions under sections 13 through 19 and 28 of this rule.

(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

(5) Primary roads shall be surfaced with nontoxic material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

*(Natural Resources Commission; 312 IAC 25-6-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3544, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, eff Jan 1, 2005)*

SECTION 6. 312 IAC 25-7-1 IS AMENDED TO READ AS FOLLOWS:

### **312 IAC 25-7-1 Inspections of sites**

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

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

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

(1) Except as provided in subsection (f), on an irregular basis averaging not less frequently than the following:

(A) One (1) partial inspection per month and one (1) complete inspection per calendar quarter for each active surface coal mining and reclamation operation.

(B) One (1) partial inspection as frequently as is necessary to ensure effective enforcement and one (1) complete inspection per calendar quarter for each inactive surface coal mining and reclamation operation.

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

(3) Include the prompt filing of inspection reports adequate to enforce IC 14-34 and this article.

(b) The director shall conduct any inspections of coal exploration operations that are necessary to ensure compliance with IC 14-34 and this article.

(c) Aerial inspections shall be conducted in a manner that reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(d) Any potential violation observed during an aerial inspection shall be investigated on-site upon the occurrence of earlier of the following:

(1) Within three (3) days after the aerial inspection.

(2) Immediately, if there is an indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under IC 14-34-15-6.

(e) An on-site investigation conducted under subsection (d) is not an additional partial inspection or an additional complete inspection under subsection (a).

(f) In lieu of the inspection frequency established in subsection (a), the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one (1) complete inspection per calendar year. In selecting an alternate frequency authorized under this subsection, the regulatory authority shall do the following:

(1) First conduct a complete inspection of the abandoned site.

(2) Provide public notice and opportunity to comment under subsection (g).

(3) Prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. The written finding shall justify the new inspection frequency by affirmatively addressing in detail the following criteria:

(A) How the site meets each of the criteria under the definition of an abandoned site in subsection (h) to qualify for a reduction in inspection frequency.

(B) Whether, and to what extent, there exists on the site an impoundment, an earthen structure, or another condition that poses, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harm to land, air, or water resources.

(C) The extent to which an existing impoundment or earthen structure was constructed and certified in accordance with prudent engineering designs approved in the permit.

(D) The degree to which erosion and sediment control is present and functioning.

(E) The extent to which the site is located near or above:

(i) an urbanized area;

(ii) a community;

(iii) an occupied dwelling;

(iv) a school; and

(v) another public or commercial building or facility.

(F) The extent of reclamation completed **prior to before** abandonment and the degree of stability of an unreclaimed area, taking into consideration:

(i) any physical characteristic of the land mined; and

(ii) the extent of settlement or revegetation that has occurred naturally.

(G) Based on a review of the complete or partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(g) The public notice and opportunity to comment required under subsection (f)(2) shall be provided as follows:

(1) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30) day period in which to submit written comments.

(2) The public notice shall contain the following:

(A) **The** name of **the** permittee.

(B) **The** permit number.

(C) **The** precise location of the land affected.

(D) **The** proposed inspection frequency.

(E) **The** general reasons for reducing the inspection frequency.

(F) **The** bond status of the permit.

(G) **The** telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted.

(H) **The** closing date of the comment period.

(h) As used in this section, the following definitions apply:

(1) "Abandoned site" means a surface coal mining and reclamation operation for which the director has found, in writing, each of the following:

(A) All surface and underground coal mining and reclamation activities at the site have ceased.

(B) The director has issued at least one (1) notice of violation and either:

(i) is unable to serve the notice despite diligent efforts to do so; or

(ii) the notice was served and has progressed to a failure-to-abate cessation order.

(C) The director is taking action:

(i) to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) under IC 14-34-16-7, IC 14-34-16-8, IC 14-34-15-7, or IC 14-34-15-11 to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where, after evaluating the circumstances, the director concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs.

(D) If the site is or was permitted or bonded, both of the following are determined:

(i) The permit has expired or been revoked. ~~or permit revocation proceedings have been initiated and are being pursued diligently.~~

(ii) The director has initiated and:

(AA) is diligently pursuing forfeiture of; or  
(BB) has forfeited;

any available performance bond.

(2) "Complete inspection" means an on-site review of a person's compliance with all permit conditions and requirements imposed under IC 14-34 and this article within the area disturbed or affected by the surface mining and reclamation operation.

(3) "Inactive surface coal mining and reclamation operation" means a surface coal mining and reclamation operation for which both of the following are satisfied:

(A) The reclamation has been completed that is necessary to obtain release of the portion of bond specified in ~~312 IAC 25-5-16(c)(2)~~; **312 IAC 25-5-16(e)(2)**.

(B) The bond has been released.

(4) "Partial inspection" means an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under IC 14-34 and this article.

*(Natural Resources Commission; 312 IAC 25-7-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3590, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2468, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214)*

SECTION 7. SECTIONS 1 through 6 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 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 10:00 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, which assist in the administration of IC 14-34 (sometimes referred to as the "Indiana Surface Control and Reclamation Act" or "Indiana SMCRA") that governs surface coal mining and reclamation activities, to make numerous changes to help assure conformance with state and federal law, to qualify approved reclamation projects financed with less than fifty percent federal funding as "government-financed construction", to remove requirements for submittal of an application for water impoundments of less than 100-acre feet and exempts impoundments that are entirely contained within an incised structure from examination requirements, to add provisions allowing director of department of natural resources to initiate an application for bond release and clarifies the procedure for conducting informal conferences regarding a proposed bond release, to clarify requirements for construction or reconstruction of primary roads, and to clarify the definition of "abandoned site" as used in 312 IAC 25-7-1.*

*The Department of Natural Resources estimates that no requirements or costs will be imposed upon a regulated entity.*

*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