**Section 1761.5 Definition of Valid Existing Rights**

Valid existing rights (VER) means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where Section 1761.11 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of Section 1761.11 and 30 USC 1272(e). A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the applicable regulatory program.

a) Property rights demonstration. Except as provided in subsection (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of Section 1761.11. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

b) Except as provided in subsection (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

1) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Section 1761.11. At a minimum, an application must have been submitted for any permit required under 62 Ill. Adm. Code 1772 through 1785.

2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of Section 1761.11. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 1761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of Section 1761.11 when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

A) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of Section 1761.11 depend upon use of that land for surface coal mining operations.

B) The extent to which plans used to obtain financing for the operation before the land came under the protection of Section 1761.11 rely upon use of that land for surface coal mining operations.

C) The extent to which investments in the operation before the land came under the protection of Section 1761.11 rely upon use of that land for surface coal mining operations.

D) Whether the land lies within the area identified on the life-of-mine map submitted under 62 Ill. Adm. Code 1779.24(c) or 1783.24(c) before the land came under the protection of Section 1761.11.

c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by Section 1761.11 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in 62 Ill. Adm. Code 1701.Appendix A:

1) The road existed when the land upon which it is located came under the protection of Section 1761.11, and the person has a legal right to use the road for surface coal mining operations.

2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 1761.11 and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 1761.11.

4) Valid existing rights exist under subsections (a) and (b) of this definition.

(Source: Added at 27 Ill. Reg. 4625, effective February 26, 2003)