**Section 1773.15 Review of Permit Applications**

a) General

1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application, and either:

A) Issue a written decision, in accordance with Section 1773.19, either granting or denying the application. If a public hearing is held under Section 1773.14, the decision shall be made within 60 days after the close of the public hearing, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3); or

B) Issue a written decision requiring modification of the application. If a public hearing is held under Section 1773.14, the decision to require modifications shall be made within 60 days after the close of the public hearing.

i) If the applicant does not submit the required modifications to the Department within one year after the date of receipt of notification of the need for modifications, the Department shall issue a written finding in accordance with Section 1773.19 denying the application. The Department may issue an extension to this time limit if the applicant can demonstrate just cause (e.g., extended periods of illness, extreme inclement weather, acts of civil unrest, or other emergency situations) for doing so.

ii) Upon receipt of the applicant's responses to the required modifications, the Department shall review the responses and issue a written decision, in accordance with Section 1773.19, either granting or denying the application.

2) The applicant for a permit or revision of a permit shall have the burden of establishing that his or her application is in compliance with all the requirements of the regulatory program.

b) Review of Violations

1) Based on a review of all reasonably available information concerning violation notices and ownership or control links involving the applicant, including information obtained pursuant to Sections 1773.22, 1773.23, 1778.13 and 1778.14, the Department shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by the applicant is currently in violation of the State Act, Federal Act, any State or federal regulation promulgated pursuant thereto, a State program, or any federal or State law or regulation pertaining to air or water environmental protection. In the absence of a failure-to-abate cessation order, the Department may presume that a notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a federal or State program is being corrected to the satisfaction of the agency with jurisdiction over the violation when the abatement period for the notice of violation has not yet expired and when, as part of the violation information provided pursuant to 62 Ill. Adm. Code 1778.14, the applicant has provided certification that the violation is in the process of being so corrected. This presumption shall not apply when evidence to the contrary is set forth in the permit application, or when the notice of violation is issued for nonpayment of abandoned mine land reclamation fees or civil penalties. If a current violation exists, the Department shall require the applicant, before the issuance of the permit, to either:

A) Submit to the Department 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; or

B) Establish for the Department that the applicant, or any person owned or controlled by the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the circuit or district court reviewing the violation, pursuant to 62 Ill. Adm. Code 1847.4(p) or 30 CFR 775.13 or in accordance with the procedures established by other state regulatory authorities, either denies a stay applied for in the appeal or affirms the violation, then the applicant shall submit the proof required under subsection (b)(1)(A) within 30 days after the court's decision.

2) Any permit that is issued on the basis of a presumption supported by certification under 62 Ill. Adm. Code 1778.14 that a violation is in the process of being corrected, on the basis of proof submitted under subsection (b)(1)(A) that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B), shall be conditionally issued.

3) If the Department makes a finding that 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 violations of the Federal or State Act of such nature and duration, and with such resulting irreparable damage to the environment, as to indicate an intent not to comply with the Federal or State Act, the application shall be denied. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 62 Ill. Adm. Code 1847.3.

c) Written Findings for Permit Application Approval

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates, and the Department finds, in writing, 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 application is complete and accurate and the applicant has complied with all requirements of the Federal Act, State Act and the regulatory program.

2) The applicant has demonstrated that reclamation as required by the Federal Act, State Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

3) The proposed permit area is:

A) Not within an area under study or administrative proceedings under a petition, filed pursuant to 62 Ill. Adm. Code 1764, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that, before January 4, 1977, he or she has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

B) Not within an area designated as unsuitable for mining pursuant to 62 Ill. Adm. Code 1762 and 1764 or within an area subject to the prohibitions of 62 Ill. Adm. Code 1761.11.

4) For mining operations for which the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under 62 Ill. Adm. Code 1778.15(c).

5) The Department has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, in accordance with 62 Ill. Adm. Code 1780 and 1784, and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

6) The applicant has demonstrated that any existing structure will comply with 62 Ill. Adm. Code 1700.11(d).

7) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870.

8) The applicant has satisfied the applicable requirements of 62 Ill. Adm. Code 1785.

9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural post-mining land use, in accordance with the requirements of 62 Ill. Adm. Code 1816.111(d) and 1817.111(d).

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 USC 1531 et seq.).

11) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.106 or 1817.106, the site of the operation is a previously mined area as defined in 62 Ill. Adm. Code 1701.Appendix A.

12) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional measures are necessary.

13) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701.Appendix A.

d) Expiration of Findings

Written findings issued by the Department approving a permit application shall expire within one year from the date of issuance if the permit has not been issued based upon the applicant's failure to submit permit fees in accordance with 62 Ill. Adm. Code 1777.17 or a performance bond in accordance with 62 Ill. Adm. Code 1800.11. When written findings expire, the Department will take no further action on the permit application. Should the applicant choose to resume permitting activity for the area in question, a new permit application must be submitted in accordance with the requirements of this Part.

e) Final Compliance Review

After an application is approved, but before the permit is issued, the Department shall reconsider its decision to approve the application, based on the compliance review required by subsection (b)(1), in light of any new information submitted under 62 Ill. Adm. Code 1778.13(j) and 1778.14(e).

(Source: Amended at 43 Ill. Reg. 12897, effective October 16, 2019)