**Section 1785.17 Prime Farmlands**

a) Scope

1) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland.

2) This Section does not apply to:

A) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

B) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

C) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease or contract; and

iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

3) For the purposes of this Section:

A) "Renewal" of a permit shall mean a decision by the Department to extend the time by which a permittee may complete mining within the boundaries of the original permit and "revision" of the permit shall mean a decision by the Department to allow changes in the method of mining operations within the original permit area, or the decision of the Department to allow amendment, pursuant to State law, prior to June 1, 1982, or other incidental boundary changes to the original permit;

B) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

C) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contigous parcels were part of a single permitted operation. For the purpose of the paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed documents (not including options) that specifically treat separate parcels as one surface coal mining operation.

4) All applicants for an exemption shall supply the Department with a scale map of the area proposed to be exempted, delineating all prime farmland soils and showing the total number of acres proposed for exemption to the nearest acre, and the numbers of acres of each prime farmland soil type in the area proposed to be exempted.

b) Application contents--reconnaissance inspection.

1) All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The reconnaissance inspection shall be either a review of an existing soil survey for the proposed permit area or an on-site inspection of the proposed permit area. The Department shall consult with the Natural Resources Conservation Service to determine the nature and extent of the required reconnaissance inspection.

2) If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

3) In those cases where an on-site inspection of the proposed permit area was the type of reconnaissance inspection conducted, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. In those cases where a review of an existing soil survey was the type of reconnaissance inspection conducted, the applicant shall have the soil survey revised, if necessary, to meet the standards of subsection (c)(1). Soil surveys of the detail used by the Natural Resources Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils, as specified in subsection (c)(1)(A).

A) If the soil survey indicates that no prime farmland soils are present within the proposed permit area, subsection (b)(2) shall apply.

B) If the soil survey indicates that prime farmland soils are present within the proposed permit area, subsection (c) shall apply.

c) Application contents for prime farmland.

All permit applications for areas in which prime farmland has been identified, within the proposed permit area, shall include the following:

1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1993);

A) These publications are hereby incorporated by reference as they exist on the date of adoption of this Part. Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are on file and available for inspection at the Office of Surface Mining and Reclamation (OSMRE) Central Office, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C., at each OSM Technical Center and Field Office. Copies of these publications may also be obtained by written request to the above locations. Copies of these documents are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 001-000-04611-0 (Soil Survey Manual) and Stock Number 001-000-04612-8 (Soil Taxonomy). In addition, these documents are available for inspection at the national, state, and local offices of the Natural Resources Conservation Service, U.S. Department of Agriculture (USDA) and at the Federal Register Library, 1100 L. Street, N.W., Washington, D.C. Copies of these documents will be available for public review and copying at cost at the Office of the Secretary of State, and at the Springfield and Benton office of the Land Reclamation Division of the Department.

B) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the Natural Resources Conservation Service, including, but not limited to, soil horizon depths, pH, and range of soil densities for each prime farmland soil map 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 of the Natural Resources Conservation Service. The Department shall request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 62 Ill. Adm. Code 1823.

2) A plan for soil reconstruction, replacement and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of 62 Ill. Adm. Code 1823.

3) Scientific data, such as agricultural school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area.

4) The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

d) Consultation with the State Conservationist.

1) Before any permit is issued for areas that include prime farmlands, the Department shall consult with the State Conservationist of the Natural Resources Conservation Service. The State Conservationist shall provide for the review of, and comment on the proposed method of soil reconstruction in the plan submitted under subsection (c). If the State Conservationist considers those methods to be inadequate, he or she shall suggest revisions resulting in more complete and adequate reconstruction. In keeping with the time limitations imposed by these regulations, the State Conservationist's response will be expected within 30 days after the last publication of the newspaper advertisement placed by the applicant. The State recognizes that the permit cannot be issued without the required consultation with USDA.

2) The State Conservationist shall provide to the Department a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

3) The State Conservationist shall assist the Department in determining the adequacy of all soil surveys required in subsection (b)(1).

e) Issuance of permit.

A permit for the mining and reclamation of prime farmland may be granted by the Department, if it first finds, in writing, upon the basis of a complete application, that:

1) The approved proposed post-mining land use of these prime farmlands will be cropland;

2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (c), after consideration of any revisions to that plan suggested by the State Conservationist under subsection (d);

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 62 Ill. Adm. Code 1823 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program; and

5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Department and the consent of all affected property owners within the permit area must be obtained.

(Source: Amended at 22 Ill. Reg. 20273, effective November 5, 1998)