**Section 1840.11 Inspections by the Department**

a) The Department shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction and shall conduct partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction to ensure enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with any of the permit conditions and requirements imposed under the Federal Act, State Act and 62 Ill. Adm. Code 1700 through 1850. The inspector shall collect evidence of any violation of the Federal Act, the State Act or 62 Ill. Adm. Code 1700 through 1850 observed.

b) The Department shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the Federal Act, the State Act and 62 Ill. Adm. Code 1700 through 1850 within the entire area disturbed, impacted or affected by surface coal mining and reclamation operations. The inspector shall collect evidence of any violation of the Federal Act, State Act or 62 Ill. Adm. Code 1700 through 1850 observed.

c) The Department shall conduct periodic inspections of all coal exploration operations required to comply with the Federal Act, the State Act, and 62 Ill. Adm. Code 1700 through 1850. The inspector shall collect evidence of any violation of the Federal Act, State Act, or 62 Ill. Adm. Code 1700 through 1850 observed.

d) Aerial inspections.

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

2) Any potential violation observed during an aerial inspection shall be investigated on site within three days; provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under 62 Ill. Adm. Code 1843.11 shall be investigated on site immediately. An on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of subsections (a) and (b) of this Section.

e) The inspections required under subsections (a), (b), (c) and (d) of this Section shall:

1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

3) Include the prompt filing of inspection reports adequate to enforce the requirements of the Federal Act, State Act, and 62 Ill. Adm. Code 1700 through 1850.

f) For the purposes of Section 1840.11, an inactive surface coal mining and reclamation operation is one for which:

1) The Department has secured from the permittee the written notice provided for under 62 Ill. Adm. Code 1816.131(b) or 1817.131(b); or

2) Reclamation Phase II as defined at 62 Ill. Adm. Code 1800.40 has been completed and the liability of the permittee has been reduced by the Department in accordance with the State program.

g) Abandoned site means a surface coal mining and reclamation operation for which the Department has found in writing that:

1) All surface and underground coal mining and reclamation activities at the site have ceased;

2) The Department has issued at least one notice of violation or the initial program equivalent, and either:

A) Is unable to serve the notice despite diligent efforts to do so; or

B) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

3) The Department:

A) Is taking action 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

B) Is taking action pursuant to Section 8.04(e), 8.04(f), 8.06(d) or 8.08 of the State Act [25 ILCS 720/8.04(e), 8.04(f), 8.06(d), 8.08] to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

4) Where the site is, or was, permitted and bonded:

A) The permit has either expired or been revoked; and

B) The Department has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

h) In lieu of the inspection frequency established in subsections (a) and (b) of this Section, the Department 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 complete inspection per calendar year.

1) In selecting an alternate inspection frequency authorized under this subsection, the Department shall first conduct a complete inspection of the abandoned site and provide public notice and the opportunity to comment under subsection (h)(2) below. Following the inspection and public notice, the Department shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

A) How the site meets each of the criteria under the definition of an abandoned site under subsection (g) above and thereby qualifies for a reduction in inspection frequency;

B) Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, 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 existing impoundments or earthen structures were 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 urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

F) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

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

2) The public notice and opportunity to comment required under subsection (h)(1) above shall be provided as follows:

A) The Department shall place a notice in a local newspaper of general circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

B) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the Department where written comments on the reduced inspection frequency may be submitted and the closing date of the comment period.

(Source: Amended at 22 Ill. Reg. 20163, effective November 5, 1998)