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**NATURAL RESOURCES COMMISSION**  
**Information Bulletin #11 (First Amendment)**

**SUBJECT:** Permitting of Properties for Surface Coal Mining If Properties Are Not under Control of the Applicant

### **I. PURPOSE**

The purpose of this document is to clarify how the Division of Reclamation of the Department of Natural Resources addresses the inclusion by a permit applicant under the surface coal mining and reclamation law ([IC 14-34](#)) of lands that are not within the control of the applicant. The document concerns Indiana's approved surface mining program, which allows a coal mine operator to place acreage under permit when there has been no purchase, lease, or other legal right of entry agreement reached between the applicant and the property owner.

### **II. BACKGROUND**

The Natural Resources Commission approved Information Bulletin #11 on March 21, 1996, which was published in the June 1, 1996, Indiana Register (19 IR 2800). Amendments are made to the bulletin to update rule and statute citations.

Following the implementation of Indiana's permanent program for surface coal mining and reclamation in 1982, uncontrolled properties were allowed to be included within permit areas with no significant limitations other than a permit condition prohibiting acceptance of bond until a permittee acquired a right of entry. Since surface disturbance could not occur within the uncontrolled properties until a right of entry was acquired and the land fully bonded, adequate protection was believed afforded to the property owner.

Even so, in 1989 some owners of uncontrolled properties began to express serious concerns over the inclusion of their properties within permit boundaries. These concerns persist, in spite of the fact that the issuance of a permit does not grant a legal right to mine nor does it otherwise affect the property without the subsequent acquisition of all necessary property rights. Property owners have sometimes expressed concerns to the Division of Reclamation regarding the disconcerting nature of seeing their property included in a plan for mining or learning of the inclusion from a neighbor. Property owners have requested that their properties be removed from permit areas, arguing they had no intention of ever allowing mining and perceiving the inclusion of their property in an approved permit area as a threat. Some property owners have expressed the opinion that the inclusion of their property in an approved permit is a violation of property rights and peace of mind and would diminish property values.

At the same time, allowing the inclusion of uncontrolled properties in a permit application can be beneficial. The permitting of uncontrolled properties can, if properly governed, afford greater flexibility to the operator and can dramatically reduce permit processing time and paperwork for the division of reclamation. If uncontrolled property cannot be included in the final permit approval, a separate permitting action must be initiated for additional acreage sought to be added to a permit when the right of entry is subsequently acquired. As a detailed review would be done during the initial permitting phase, the time-consuming aspect of reviewing each subsequent individual permit revision request would be sharply reduced.

This potential benefit must be balanced, however, against the risk of spending substantial staff resources to review a mine plan based on excessive speculation due to the inclusion of large segments of uncontrolled property. Problems have sometimes occurred subsequent to permit approval because the approved mine plan cannot be accomplished due to the strategic location and interference of uncontrolled properties. Additional problems have arisen during the application review process when staff access to uncontrolled properties has been restricted. On occasion, critical environmental information must be obtained or verified from uncontrolled properties by staff of the Division of Reclamation in order to conduct the necessary application review.

To address these varied and sometimes conflicting legitimate interests, a balanced approach should be implemented to address the permitting for surface coal mining of uncontrolled properties. That approach must properly:

- (a) consider concerns for private property rights;
- (b) support a permitting system which avoids bureaucratic delays;
- (c) assure the environmental integrity of a mining and reclamation plan for areas to be disturbed; and
- (d) support the efficient and cost-effective use of human resources within the Division of Reclamation.

To these ends, owners of uncontrolled properties should be notified of a permit application and given an opportunity to object to the inclusion of those lands in the permit area. With minor exceptions determined on a case-by-case basis by the Director or his designee, not more than one-third (1/3) of the total acreage of a permitted area should consist of uncontrolled properties. While there have been instances of problems regarding the permitting of uncontrolled properties, almost 15 years of experience by the Division of Reclamation has not revealed concerns relative to program and regulatory enforcement.

### **III. APPLICATION**

The Natural Resources Commission applies the following policy statement:

1. For the purposes of this document, "uncontrolled properties" refers to land holdings located within a proposed permit boundary for which the applicant for a surface coal mining permit has not attained a right of entry.
2. For the purposes of this document, "permit" refers to a permit to conduct surface coal mining operations as issued by the Department of Natural Resources pursuant to [IC 14-34](#).
3. Uncontrolled properties may be included in the permit area if the combined acreage of the uncontrolled properties does not exceed one-third (1/3) of the total permit area, unless otherwise approved by the Director or his designee.
4. Owners of uncontrolled properties within the proposed permit boundaries shall be notified of the permit application pursuant to [IC 14-34-3-3\(2\)](#) and [IC 14-34-4-1\(2\)](#). No uncontrolled property shall be included in a permit area if the property owner files a written objection pursuant to [312 IAC 25-4-108](#) with the Division of Reclamation. An objection to the inclusion of a property within a permit area filed after the close of the public comment period will be considered during the next midterm review of the permit. Uncontrolled property may be permitted if the objecting property owner subsequently files a written withdrawal of the objections prior to approval of the permit.
5. Uncontrolled property shall not be included in the permit area if the Director or his designee determines either:
  - (a) the mine plan cannot be implemented without the subsequent acquisition of the uncontrolled property;  
or
  - (b) the uncontrolled property does not constitute a necessary portion of a logical mining sequence.
6. If access to an uncontrolled property is necessary to make required findings for permit approval, and access has been denied to the Department of Natural Resources by the property owner, the uncontrolled property shall not be included in the approved permit area.
7. Notwithstanding paragraph (4) above, a permit application containing uncontrolled properties may be approved but only with the specific condition that bond will not be approved (and, thus, mining activities prohibited) on the uncontrolled property until a right of entry is acquired and properly documented pursuant to [312 IAC 25-4-19](#).

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