

### **IC 14-34-3**

#### **Chapter 3. Permit Requirements**

### **IC 14-34-3-1**

#### **Mining without permit**

Sec. 1. A person may not open, develop, or operate a new or previously mined or abandoned site for surface coal mining operations in Indiana without holding a valid surface coal mining and reclamation permit.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-3-2**

#### **Form prescribed by director**

Sec. 2. A person must make application for a surface coal mining and reclamation permit to the director on a form prescribed by the director.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-3-3**

#### **Application requirements; contents**

Sec. 3. An application for a surface coal mining and reclamation permit must include the following:

- (1) The names and addresses of the following:
  - (A) The permit applicant.
  - (B) Every legal owner of record of the property (surface and mineral) to be mined.
  - (C) The holders of record of any leasehold interest in the property.
  - (D) Any purchaser of record of the property under a real estate contract.
  - (E) The operator if the operator is a person different from the applicant.
  - (F) If a person in clauses (A) through (E) is a business entity other than a single proprietor, the names and addresses of the principals, officers, and resident agent.
- (2) The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area.
- (3) A statement of each current or previous surface coal mining permit in the United States held by the applicant, including each pending application, the permit identification, and the state that issued that permit or holds the pending application.
- (4) If the applicant is a partnership, a corporation, an association, or other business entity, the following where applicable:
  - (A) The names and addresses of every officer, partner, or director or person performing a function similar to a director of the applicant.
  - (B) The name and address of each person owning, of record, at least ten percent (10%) of any class of voting stock of the

applicant.

(C) A list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within the United States within:

- (i) the five (5) years preceding the date of submission of the application; or
- (ii) any additional period that the director establishes.

(5) A statement of whether the applicant or a subsidiary, an affiliate, or a person controlled by or under common control with the applicant has:

- (A) ever held a federal or state coal mining permit that in:
  - (i) the five (5) years preceding the date of submission of the application; or
  - (ii) any additional period that the director establishes; was suspended or revoked or is in the process of revocation;
- or
- (B) had a mining bond or similar security deposited in lieu of bond forfeited;

and if so, a brief explanation of the facts involved and identification of the state in which this action occurred.

(6) A copy of the applicant's advertisement to be published under IC 14-34-4-1. The advertisement must include the following:

- (A) The names of the property owners involved.
- (B) A description of the exact location and boundaries of the proposed site sufficient so that the proposed surface coal mining operation is readily locatable by local residents.
- (C) The location where the application is available for public inspection.

(7) A description of the following:

- (A) The type and method of surface coal mining operation that exists or is proposed.
- (B) The engineering techniques proposed or used.
- (C) The equipment used or proposed to be used.

(8) The anticipated or actual starting and termination dates of each phase of the surface coal mining operation and the number of acres of land to be affected.

(9) An accurate map or plan, to an appropriate scale, clearly showing the following:

- (A) The land to be affected as of the date of the application.
- (B) The area of land within the permit area upon which the applicant has the legal right to enter and commence surface coal mining operations, including the following:
  - (i) A statement of those documents upon which the applicant bases the applicant's legal right to enter and commence surface coal mining operations on the area affected.
  - (ii) Whether that right is the subject of pending court litigation.

(10) The name of the watershed and location of the surface

stream or tributary into which surface and pit drainage will be discharged.

(11) A determination of the probable hydrologic consequences of surface coal mining and reclamation operations, both on and off the mine site, with respect to the following:

- (A) The hydrologic regime.
- (B) The quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions.
- (C) The collection of sufficient data for the mine site and surrounding areas so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability.

However, this determination is not required until the time that hydrologic information on the general area before mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application.

(12) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the following:

- (A) The average seasonal precipitation.
- (B) The average direction and velocity of prevailing winds.
- (C) The seasonal temperature ranges.

(13) Accurate maps to an appropriate scale clearly showing the land affected on the date of application and the same information that is set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and archeological and historical sites known by the division of historic preservation and archeology. The map or plan must show the following:

- (A) All boundaries of the land to be affected.
- (B) The boundary lines and names of present owners of record of all surface areas abutting the permit area.
- (C) The location of all buildings within one thousand (1,000) feet of the permit area.

(14) Cross section maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by an engineer licensed under IC 25-31 or a geologist licensed under IC 25-17.6 with assistance from experts in related fields such as land surveying and landscape architecture. The maps or plans must show pertinent elevation and location of test borings or core samplings and depict the following:

- (A) The nature and depth of the various strata of overburden as required by the commission in the commission's rules.
- (B) The location and quality of subsurface water if encountered.

- (C) The nature and thickness of each coal or rider seam above the coal seam to be mined.
  - (D) The nature of the stratum immediately beneath the coal seam to be mined.
  - (E) All mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected.
  - (F) Existing or previous surface coal mining limits.
  - (G) The location and extent of known workings of each underground coal mine, including mine openings to the surface.
  - (H) The location of aquifers as required by the commission in the commission's rules.
  - (I) The estimated elevation of the water table.
  - (J) The location of spoil, waste, or refuse areas and topsoil preservation areas.
  - (K) The location of all impoundments for waste or erosion control.
  - (L) Each settling or water treatment facility.
  - (M) Constructed or natural drainageways and the location of each discharge to a surface body of water on the area of land to be affected or adjacent to the land to be affected.
  - (N) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved under the operator's proposed reclamation plan.
- (15) A statement of the result of test borings or core samplings from the permit area, including the following:
- (A) Logs of the drill holes.
  - (B) The thickness of the coal seam found and an analysis of the chemical properties of that coal.
  - (C) The sulfur content of each coal seam.
  - (D) Chemical analysis of potentially acid or toxic forming sections of the overburden.
  - (E) A chemical analysis down to and including the deeper of the following:
    - (i) The stratum lying immediately underneath the lowest coal seam to be mined.
    - (ii) An aquifer below the lowest coal seam to be mined that may be adversely impacted by mining.
- The director may waive the requirement as to the specific application of this clause if the director determines in writing the requirements are unnecessary.
- (16) For the land in the permit application that a reconnaissance inspection suggests may be prime farmland and to confirm the exact location of the prime farmland, a soil survey in accordance with the standards established by the United States Secretary of Agriculture.
- (17) A reclamation plan that meets the requirements of section 12 of this chapter.
- (18) Proof that the applicant is self-insured or has a public liability insurance policy issued by an insurance company

authorized to do business in Indiana in force for the surface coal mining and reclamation operations for which the permit is sought. The policy must provide for personal injury and property damage protection in an amount adequate to compensate each person injured as a result of the surface coal mining and reclamation operation. If a permit is granted, the permittee shall maintain the policy in full force and effect for the duration of the permit or a renewal.

(19) A blasting plan that outlines the procedures the operator will use to comply with IC 14-34-12.

(20) A listing of all notices of violations, and their final resolution, of:

(A) IC 13-4.1 (before its repeal);

(B) this article; and

(C) a:

(i) federal statute or regulation; or

(ii) state statute or rule enacted or adopted in response to a federal statute or regulation;

pertaining to air or water environmental protection;

incurred by the applicant or a subsidiary, an affiliate, or a person controlled by or under common control with the applicant in connection with any surface coal mining operation during the three (3) year period before the date of application.

*As added by P.L.1-1995, SEC.27. Amended by P.L.2-1997, SEC.54; P.L.17-1999, SEC.1.*

#### **IC 14-34-3-4**

##### **Confidential or public information pertaining to coal seams, test borings, core samplings, or soil samples**

Sec. 4. The information required by section 3 of this chapter pertaining to coal seams, test borings, core samplings, or soil samples is available for inspection by any person with an interest that is or may be adversely affected by the surface coal mining and reclamation operation. However, the information that pertains only to the analysis of the chemical and physical properties of the coal, except information concerning a mineral or elemental content that is potentially toxic in the environment and the nature and location of archeological resources on public land and Indian land as required under the federal Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), is confidential.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-3-5**

##### **Probable hydrologic consequences of test borings or core samplings**

Sec. 5. Upon the written request of the operator and if the director finds that the probable total annual production at all locations of a surface coal mining operator will not exceed three hundred thousand (300,000) tons, a qualified public or private laboratory designated by the director shall determine the probable hydrologic consequences

and the results of test borings or core samplings required by section 3 of this chapter. The department shall assume the cost of preparation of the determination made under this section.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-3-6**

##### **Application available for public inspection**

Sec. 6. Each applicant for a surface coal mining and reclamation permit, amendment, transfer, or renewal shall file an entire copy of the application, except for the information pertaining to the coal seam, for public inspection in the main public library in the county in which the proposed mining operation is located or in an appropriate public office in that county, as approved by the director. The documents may not be recorded.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-3-7**

##### **Filing fee**

Sec. 7. An applicant must pay a filing fee of fifty dollars (\$50).

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-3-8**

##### **Application on file for 30 days**

Sec. 8. An application remains on file until thirty (30) days after the director's final decision on the application, at which time the applicant may remove the application.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-3-9**

##### **Application on file and available for inspection**

Sec. 9. An accurate and complete copy of an application, except as provided in section 4 of this chapter, must:

- (1) remain on file at the office of the division of reclamation nearest the mining operation; and
- (2) be available for public inspection and copying at reasonable charge during normal business hours.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-3-10**

##### **Information concerning archeological and historic sites; limitation on enforcement of section and rules**

Sec. 10. (a) The director may require a permit applicant to submit additional information concerning the identity, location, and nature of archeological and historic sites in or within one thousand (1,000) feet of the permit area in accordance with rules adopted by the commission to implement this section.

(b) In the rules implementing this section, the commission shall provide that the director may require a permit applicant to identify and evaluate important archeological and historic sites through the following:

- (1) Searches of the records of the following:
    - (A) Research institutions.
    - (B) The state historical preservation office.
  - (2) Field investigations.
  - (3) Other appropriate investigations according to standards incorporated in the rules.
- (c) The commission's rules must be consistent with the principles set forth in IC 14-34-4-10(c).
- (d) This section and the rules adopted under this section may not be enforced if and to the extent that any federal court holds that the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201-1328) does not authorize the requirements of records searches, field investigations, or other studies in connection with application for surface coal mining operations.
- As added by P.L.1-1995, SEC.27. Amended by P.L.16-2009, SEC.24.*

### **IC 14-34-3-11**

#### **Reimbursement of costs to department**

Sec. 11. (a) Whenever the department has assumed the cost of a test or determination required by section 5 of this chapter, the operator for whom the costs were assumed shall reimburse the department for the costs if any of the following conditions exist:

- (1) The actual and attributed annual coal production of the operator at all locations exceeds three hundred thousand (300,000) tons during any consecutive twelve (12) month period either during:
  - (A) the term of the permit for which assistance was provided; or
  - (B) the first five (5) years after issuance of the permit;whichever is shorter.
- (2) False information was given the department in the application for the permit or in reports required by the department.
- (3) A permit application was not submitted to the department within one (1) year after the date the permittee received the report for which the cost was assumed.
- (4) The applicant does not begin mining within six (6) months after obtaining the permit.
- (5) The:
  - (A) permit is sold, transferred, or assigned to another person; and
  - (B) transferee's total actual and attributed production exceeds the three hundred thousand (300,000) ton annual production limit during any consecutive twelve (12) month period of the remaining term of the permit.

Under this subdivision the applicant and the applicant's successor are jointly and severally obligated to reimburse the department.

(b) The department may waive the reimbursement obligation if the department finds that the applicant at all times acted in good faith.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-3-12**

#### **Reclamation plan**

Sec. 12. (a) Each reclamation plan submitted as part of a permit application as required by section 3 of this chapter must include the following, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished:

(1) The:

- (A) identification of land subject to surface coal mining operations over the estimated life of those operations; and
- (B) size, sequence, and timing of the sub areas for which it is anticipated that individual permits for mining will be sought.

(2) A statement of the condition of the land to be covered by the permit before mining, including the following:

- (A) The uses existing at the time of the application.
- (B) If the land has a history of previous mining, the uses that preceded mining.
- (C) The capability of the land before mining to support a variety of uses giving consideration to the following:
  - (i) Soil and foundation characteristics.
  - (ii) Topography.
  - (iii) Vegetative cover.
  - (iv) If applicable, a soil survey prepared under section 3(16) of this chapter.
- (D) The productivity of the land, including the following:
  - (i) Appropriate classification as prime farmland.
  - (ii) The average yield of food, fiber, forage, or wood products from the land obtained under high levels of management.

(3) The proposed use of the land following reclamation, including the following:

- (A) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses.
- (B) A discussion of the relationship of that use to existing land use policies and plans.
- (C) The comments of any owner of the surface and state and local governments or agencies of state and local governments that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(4) A detailed description of:

- (A) how the proposed postmining land use is to be achieved; and
- (B) the necessary support activities that may be needed to achieve the proposed land use.

(5) A description of the engineering techniques and the major equipment proposed to be used in the surface coal mining and reclamation operation.

- (6) Plans for the following:
  - (A) The control of surface water drainage and of water accumulation.
  - (B) Where appropriate, backfilling, soil stabilization, and compacting, grading, and appropriate revegetation.
  - (C) Soil reconstruction, replacement, and stabilization under the performance standards in IC 14-34-10-2(b)(10) for the food, forage, and forest land identified in IC 14-34-10-2(b)(10).
- (7) An estimate of the cost of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in IC 14-34-10-2.
- (8) The consideration given to maximize the use and conservation of the solid fuel resource recovered so that re-affecting the land in the future is minimized.
- (9) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan.
- (10) The consideration given to making the surface coal mining and reclamation operation consistent with the following:
  - (A) Surface owner plans.
  - (B) Applicable state and local land use plans and programs.
- (11) The steps to be taken to comply with the following:
  - (A) Applicable air and water quality laws and rules.
  - (B) Applicable health and safety standards.
- (12) The consideration given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions.
- (13) With respect to land contiguous to the area to be covered by the permit, a description of the following:
  - (A) The land.
  - (B) Interests in the land.
  - (C) Options on interests in the land held by the applicant.
  - (D) Pending bids on interests in the land by the applicant.

This information is confidential and not a matter of public record.

- (14) The results of test borings that the applicant has made to the permit area or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties. The analysis must include an analysis of the acid-forming properties of the mineral and overburden. The information that pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental contents that are potentially toxic in the environment, is confidential.
- (15) A detailed description of the measures to be taken during the surface coal mining and reclamation process to assure the protection of the following:
  - (A) The quality of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and

reclamation process.

(B) The rights of present users to that water.

(C) The quantity of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured.

(16) Other information that the commission requires by rule.

(b) Unless otherwise provided, information required by this section that is not on public file under Indiana law is confidential.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-3-13**

#### **Departures from standards**

Sec. 13. To encourage advances in coal mining and reclamation practices or to allow postmining land use for industrial, commercial, residential, recreational, or public use, the director may, with the approval of the United States Secretary of the Interior, permit departures in individual cases from the standards established in IC 14-34-10 and IC 14-34-11. The director may permit these departures only if the following conditions exist:

(1) The experimental practices are:

(A) potentially more; or

(B) at least as;

environmentally protective during and after the coal mining operations as those required under commission rules governing this section.

(2) The coal mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices.

(3) The experimental practices do not reduce the protection afforded public health and safety below that provided by commission rules governing this section.

*As added by P.L.1-1995, SEC.27.*

### **IC 14-34-3-14**

#### **Coordination with other federal act requirements**

Sec. 14. The director shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the following:

(1) The federal Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(2) The federal Fish and Wildlife Coordination Act (16 U.S.C. 661 through 666c).

(3) The federal Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 through 711).

(4) The National Historic Preservation Act (16 U.S.C. 470 et seq.).

(5) The federal Bald Eagle Protection Act (16 U.S.C. 668a).

*As added by P.L.1-1995, SEC.27.*