BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:

RECODIFICATION OF COAL	**)**	**Administrative Cause**
MINING AND RECLAMATION	**)**	**Number: 07-005R**
OPERATIONS RULE (312 IAC 25)	**)**	**(LSA Document #07-146(F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the final adoption of the recodification of the Coal Mining and Reclamation Operations rule, article (312 IAC 25). This article includes 312 IAC 25-1 (Definitions); 312 IAC 25-2 (General Provisions); 312 IAC 25-3 (Areas Unsuitable for Mining); 312 IAC 25-4 (Permitting Procedures); 312 IAC 25-5 (Bonding Liability Insurance); 312 IAC 25-6 (Performance Standards); 312 IAC 25-7 (Inspection and Enforcement Procedures); 312 IAC 25-8 (Restriction on Financial Interest of State Employees); 312 IAC 25-9 (Training, Examination, and Certification of Blasters); and, 312 IAC 25-10 (Reclamation Division Fund; Reclamation Fee). Due to the voluminous nature of 312 IAC 25, the text has not been incorporated into this report. The hearing officer will provide a paper or electronic copy to any Commission member upon request or it may be viewed at http://www.in.gov/legislative/iac/T03120/A00250.PDF?.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to recodifications. Where no amendments are proposed, and rules would be readopted in their current form, the Director of the Division of Hearings may approve preliminary action. The standard practice would be to readopt by article. The Commission retained authority to take final action on recodifications.

No amendments were proposed to the rule article, 312 IAC 25, and they would be readopted in their current form. The Director of the Division of Hearings approved preliminary action. 312 IAC 25 is now submitted for consideration as to final action.

B. RECODIFICATION ANALYSES UNDER IC 4-22-2.5-3.1

On February 20, 2007, Bruce Stevens, Director of the Division of Reclamation and Brock Mayes, Project Coordinator for the Division of Reclamation, provided analyses for the proposed readoption to consider potential impacts to small businesses as required by IC 4-22-2.5-3.1. The analysis states as follows:

The regulations at 312 IAC 25 implement the statutory provisions of IC 14-34, known as the Indiana Surface Mining Act. 312 IAC 25 is counterpart for federal regulations at 30 CFR Part 700 to End and IC 14-34 is counterpart to federal Public Law 95-87. The U.S. Department of Interior's Office of Surface Mining is the federal oversight authority of the Division of Reclamation. The Department of Interior provides an avenue for individual states to adopt law and regulation and implement the federal Surface Mining Act of 1977 within their state government. This is known as "primacy". The State of Indiana determined in 1977 to work toward receiving primacy. One of the conditions of state primacy is to implement a program that is no less effective than the respective federal counterparts. Through much regulatory effort, Indiana ultimately received primacy on July 25, 1982. As a result, Indiana must maintain the regulations at 312 IAC 25 in order to continue to have a viable program recognized by the Department of Interior which in turn provides Indiana over 3 million dollars in administrative grants annually as well as a historic abandoned mine land construction grant of 4 to 5 million dollars annually.

The department maintains a certification database of approximately 250 active blasters of which 90% of the blasters are employees of the mining companies. About 10 percent of the blasters work independent of companies and would be considered "small businesses" as defined in IC 4-22-2-28.1(d). Those individuals could be financially responsible for obtaining 15 hours of additional training every 36 months. The estimated cost of 15 hours taken at training conferences approved by the department is approximately $200.00 over a 36 month time frame. Coal companies typically pay for their employees to attend the training conferences. The department continues to work with coal companies on approved onsite training at the mines in order to minimize the financial impact on coal companies as well as on small business entities. The department offers its database for record keeping of certification hours for all blasters. The Department of Natural Resources (DNR) estimates less than a $200.00 financial burden per 36 month period on small business (independent blasters) by the readoption of 312 UAC 25-8-9.

In regards to the remaining 312 IAC 25 rules being readopted, the department estimates there would be no financial burden on small businesses. The DNR estimates that no annual administrative costs or annual economic impact would be incurred by a small business to comply with the readoption of 312 IAC 25. No justification is required as 312 IAC 25 is expressly mandated by both Indiana statute and federal law. No consideration was required by the department for alternative methods for the purpose of readoption of 312 IAC 25. The Natural Resources Commission has the authority to adopt rules under IC 14-10-2-4.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

A "Notice of Intent to Readopt" was posted to the Indiana Register database website on March 7, 2007 as 20070307-IR-312070146RNA, as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 4 without changes. The notice provided that a person had 30 days to submit a written request to the Natural Resources Commission seeking to have a particular section of the rule be readopted separately from the general recodification. If such a request is made, the Commission would be required to complete the full rule adoption process for the section. No written request has been received. Where no request is received, the Commission may either submit the rule for filing with the publisher under IC 4-22-2-35 or elect the procedure for recodification under IC 4-22-2. The recommendation is that the Commission approval submittal of the rule for filing with the publisher.

Dated: April 26, 2007

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Sandra L. Jensen
Hearing Officer