



COALEX STATE COMPARISON REPORT - 228

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Karen Jacobs, Esquire
Illinois Department of Mines and Minerals
Land Reclamation Division
300 West Jefferson Street - Suite 300
P.O. Box 10137
Springfield, Illinois 63791-0137

TOPIC: INCIDENTAL BOUNDARY REVISIONS AND INSIGNIFICANT PERMIT REVISIONS

INQUIRY: Illinois DMM is interested in obtaining information on IMCC-member states' regulations regarding these two topics:

1. Incidental boundary revisions (IBRs):
 - a. Is there a limit to the number of IBRs which may be issued under a single permit?
 - b. Are acreage limitations imposed on IBRs?
 - c. Have there been any OSM oversight concerns with the regulations or their implementation?
2. Insignificant permit revisions (IPRs):
 - a. Are land use changes allowed via the IPR process?
 - b. If so, under what criteria are they allowed, e.g., under a certain acreage limitation?
 - c. What are the differences between an insignificant and a significant permit revision?
 - d. Have there been any OSM oversight concerns with the use of the IPR process for land use changes or with any other aspect of the implementation of these state regulations?

SEARCH RESULTS: A telephone survey of nine IMCC member states was conducted using the questions listed above. Results of the survey follow. Copies of state statutes, regulations or policies are attached, as indicated. Also included is a copy of COALEX State Inquiry Report - 165, "Permit revisions; incidental boundary revisions" (1991).

ALABAMA

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a/b. There is no limit to the number of IBRs allowed under a	a/b. Land use changes are



<p>single permit nor are there acreage or percentage limits. The IBR limitations are functional, i.e., if the baseline information covers the area proposed to be added then the regulatory authority (RA) considers it an IBR. If the revision involves a new property owner, it has to be advertised.</p>	<p>allowed under the IPR process; however, the operator must go through the public notice procedure.</p>
<p>c. There were some OSM oversight problems several years ago, nothing recently.</p>	<p>c. A written policy defines when a revision is considered "incidental", "insignificant" or "significant"</p>
	<p>d. There have been no OSM oversight concerns on this issue.</p>

INDIANA

<p>INCIDENTAL BOUNDARY REVISION</p>	<p>INSIGNIFICANT PERMIT REVISION</p>
<p>a. There is no limit on the number of IBRs per permit term.</p>	<p>a/b. Post-mining land use changes require an abbreviated revision process. Notice must be given to state agencies for their comments but public notice is not required. The appeal processes apply.</p>
<p>b. The additional acreage of each IBR request may not exceed 20 acres or 10% of the original permit area. The aggregate of all coal removal IBRs may not exceed 10% of the original permit area. The aggregate of all non-coal removal IBRs may not exceed 15% of the original area. IBRs may not be used to avoid full permit revisions.</p>	
<p>c. Earlier in the program there were oversight problems due to the abuse of the system.</p>	<p>c. No additional acreage may be added through the IPR process. Changes may be made to the operations plan, etc., provided there is no "significant impact".</p>
	<p>d. Earlier in the program, there were some OSM concerns as a result of public complaints. As a result, the relevant statute was changed and the</p>



	regulations revised to better define different types of permit revisions.
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KENTUCKY

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a. Limits do not depend on the number of IBRs applied for.	a/b/c. Applications for minor revisions, which do not require public advertisement, may be approved by state field offices. Applications for changes involving greater than 20 acres are considered major revisions and require public advertisement.
b. The statute and regulations regarding major and minor permit revisions were revised about a year ago: The area included in the IBR may not exceed 10% of the permitted area nor exceed a maximum of 20 acres. Additional conditions apply, e.g., the area to be added must be contiguous, lie within the same watershed, be required for "orderly continuation" for mining that coal seam, have been included in the baseline information, etc. No IBR will be issued when there is a change in the mining method or the area is considered "unsuitable for mining" or is part of a historic area. The additional area must conform to the reclamation plan. In the event that the operator applies for and receives a permit amendment and existing IBRs are incorporated into the permit, the 10% or 20 acre "clock" starts anew from zero.	
c. There have been no OSM oversight problems with this issue.	
	d. There have been no OSM oversight problems with this issue.

MARYLAND

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a. There is no limit to the number of IBRs per permit.	a/b/c. There are 28 conditions listed in the regulations which are



	considered IPRs.
b. The IBR is limited to 250 feet from the original perimeter of the permitted area. However, as the total acreage permitted must not change, an equal number of acres must be reduced from another part of the permitted area.	
c. There have been no OSM oversight problems.	
	c. There have been no OSM oversight problems.

OHIO

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a. There are no limits on the number of IBRs which may be issued under a single permit.	a/b. Certain kinds of land use changes may be allowed via the IPR process.
b. Policy states that the limit for the IBR is 5% of the permitted area. In practice, an IBR limit of up to 10% may be considered, depending on the circumstances.	
c. There have been no OSM oversight problems with IBRs.	c. The regulations list the revisions that are considered "significant"; revisions not listed are considered "insignificant".
	d. New policies were developed as a result of OSM oversight problems that occurred about 5 years ago.

PENNSYLVANIA

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a. See the attached material.	a/b. Land use changes are not allowed via the IPR process; such changes require public notice.
b/c. Each IBR is limited to 5 acres for coal extraction; some additional acreage may be considered for support areas. An IBR will be considered under such conditions as a small, isolated area not seen at the time the original permit was approved; for survey	



errors, etc.	
	c. See the attached material.
d. There have been no OSM oversight problems.	d. OSM recently reviewed Pennsylvania permit revisions and renewals. The report indicated that for 12 of 25 revisions an update CHIA should have been considered; some other revisions should have gone through the public notice process.

TEXAS

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a. There are no limits on the number of IBRs allowed under a single permit.	a. Compatible land use changes are allowed under the IPR process.
b. An IBR may be issued if it is "necessary for" or will "facilitate" the mining operation, e.g., for roads, sedimentation ponds, diversions, etc. An IBR may not be issued to increase the actual mining area. [Policy]	b. The criteria for these changes are broad; however, the operator must still meet all performance standards and there must be no "significant impact" on the environment. Acreage is a factor under certain revisions.
c. OSM raised concerns about the size of the Texas IBRs. Texas responded that while the number of acres allowed in some IBRs may seem large, the percentage of the IBR was not because the original permitted mine area was large.	c. The regulation lists what "significant" revisions are; by default, if the revision is not listed it is considered an "insignificant" revision. This is similar to the 1979 federal rule.
	d. OSM reviewed the revisions this year and determined that the regulations were broad but were not "arbitrary and capricious".



VIRGINIA

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a. Yes, there is a concern if more than one is requested.	a/b. Land use changes are not allowed via the IPR process.
b. An IBR will be issued after an analysis of the operator's justification for the IBR, the size of the original permitted area, etc.	
c. There have been no OSM oversight problems.	
	d. There have been no OSM oversight problems.

WEST VIRGINIA

INCIDENTAL BOUNDARY REVISION	INSIGNIFICANT PERMIT REVISION
a. There are no limits to the number of IBRs allowed under a single permit.	a/b/c. Land use changes always require public notice and are considered "significant" permit revisions.
b. Over the life of the permit, the IBRs are limited to 20% of the original permitted acreage to a maximum of 50 acres.	
c. There were no OSM oversight problems.	
	d. There have been no OSM oversight problems with this issue.

ATTACHMENTS

A. ALABAMA:

1. Memorandum from Randall C. Johnson, Director, Alabama Surface Mining Commission, "Revised Guidelines for Revisions" (1987).
2. Rules of Alabama Surface Mining Commission, Sec. 880-X-8M-.06 (1982). Permit revisions.

B. INDIANA:

1. 310 IAC 12-3-121 (1986). Permit revisions; revisions and renewals, etc.
2. 310 IAC 12-3-82 (1982). Postmining land use.

C. KENTUCKY:

1. KRS Ann. Sec. 350.070 (Baldwin)(1991). Permit revisions.
2. 405 KAR 8:010, Sec. 20 (1991). Permit revisions.



- D. MARYLAND: COMAR 08.13.09.08 (1980). Permit review and transfer of permit rights.
- E. OHIO:
 - 1. Ohio Admin. Code 1501:13-4-06 (1986). Permit applications, revisions and renewals, etc.
 - 2. Ohio Admin. code 1501: 13-9-17 (1982). Postmining use of land.
- F. PENNSYLVANIA:
 - 1. Current Policy Guidelines, "Insignificant Boundary Corrections for Surface Mining Activities", Sec. II:02:03:1 (1986).
 - 2. PADER Coal Mining Regulations, Sec. 86.54 (1989). Public notice of permit revision.
- G. TEXAS: Railroad Commission of Texas, Surface Coal Mining Regulations, Sec. 051.07.04.226 (1979). Permit revisions.
- H. VIRGINIA:
 - 1. Memorandum from Danny R. Brown, Commissioner, Division of Mined Land Reclamation, "Incidental Boundary Revision/Insignificant Permit Revision" (1992).
 - 2. Virginia Surface Mining Regulations, Sec. 480-03-19.774.13 (1985). Permit revisions.
- I. WEST VIRGINIA:
 - 1. West Virginia Surface Mining Regulations, Sec. 38-2-3 (1990). Incidental boundary revisions.
 - 2. West Virginia Surface Mining Regulations, Sec. 38-2-7 (1986). Criteria for approving alternative postmining use of land.
 - 3. West Virginia Surface Mining Regulations, Sec. 38-2-3 (1986). Permit revisions.
 - 4. West Virginia Surface Mining Regulations, "Addendum to Permit or Significant Revision of a Permit".
- J. OSM DIRECTIVE, Subject No. REG-19, Transmittal No. 397, "Incidental Boundary Revisions" (1987).
- K. OSM DIRECTIVE, Subject No. REG-21, Transmittal No. 398, "Findings and Determinations for Revisions and Renewals of Federal Permits" (1987).
- L. Copies of survey conducted by IMCC for COALEX REPORT - 165.
- M. COALEX STATE INQUIRY REPORT - 165, "Permit revisions; incidental boundary revisions" (1991). [ONLY SURVEY RESPONSES INCLUDED - SEE ABOVE]