



COALEX STATE INQUIRY REPORT - 118
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TOPIC: MAJOR/MINOR PERMIT REVISIONS

INQUIRY:

How do the following states define "major" or "significant" permit revision, e.g., one to which all permit application information requirements would apply: Indiana, Tennessee, West Virginia, Montana and Wyoming?

SEARCH RESULTS:

Research was performed using the COALEX Library on LEXIS. State statute and regulatory sections retrieved as a result of the research are listed below. Copies of the sections plus one Office of Surface Mining (OSM) Directive on Permit Revisions are attached.

FEDERAL STATUTORY AUTHORITY

Section 511 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1261, provides the statutory authority for permit revisions.

FEDERAL REGULATORY AUTHORITY

30 CFR Sec. 774.13 Permit revisions, states that the regulatory authority shall establish the approval time period, guidelines for determining what is a "significant" permit revision and criteria for revised permit approval.

STATE REGULATORY AND STATUTORY AUTHORITY

1. INDIANA

- a. Reg. Sec. 310 IAC 12-3-121 lists the conditions under which a "revision to a permit shall be obtained". Subsection 121(c) defines "incidental boundary revisions"; the definition includes percentage and acreage figures and distinguishes between original permit area and coal removal area within the permit area.



- b. Reg. Sec. 310 IAC 12-3-5. Subsection 5(c) of this permitting procedures section lists the time period for applying for a permit revision: 120 days before permittee expects to revise mining operations.
- c. Reg. Sec. 310 IAC 12-3-123 regulates permit renewals. If a proposal to extend the boundaries beyond the existing permit is included, subsection 123(b)(2) states that the "new land areas shall be subject to the full standards applicable to new permit applications."
- d. Reg. Sec. 310 IAC 12-3-128 provides the "Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit".
- e. The relevant state statute sections included are:
 - o 13-4.1-5-4 Permit Terms: Renewal
 - o 13-4.1-5-5 Permit Terms: Revision of permit
 - o 13-4.1-5-8 Perm

2. **TENNESSEE**

OSM directly regulates the surface coal mining operations in Tennessee through regulations contained in 30 CFR Part 942. This took effect October 1, 1984. See the Preamble and Final Rules beginning at 49 FR 38874 (OCTOBER 1, 1984). OSM amended its regulation governing permit revisions in Tennessee (Part 942.774), effective 1/4/89. The Preambles from the Federal Register entries and the texts of both the Proposed Rule and the Final Rule are attached:

- a. Final Rule: 53 FR 49104 (DECEMBER 5, 1988)
- b. Proposed Rule: 53 FR 26566 (JULY 13, 1988)

The 10/1/84 version of 942.774 and the relevant section of the previous version of the Tennessee program are also attached.

3. **WEST VIRGINIA**

- a. W. Va. Code Sec. 22A-3-19 (1985) sets out the permit revision and renewal requirements. Subsection 22A-3-19(a)(2) defines "incidental boundary revisions" as including, "but not limited to, additional areas of disturbance ancillary to permitted surface effects of underground mining operations...." The corresponding regulatory section is 7D.
- b. Reg. Sec. 3N.01 states that "any revision to a permit will be subject to review and approval by the director...."

4. **MONTANA**

- a. Mont. Code Ann. Sec. 82-4-221 (1980) provides the statutory authority for coal mining permits. Subsection 82-4-221(3) discusses revision of a permit: "Application for minor revisions shall be approved or disapproved...depending on the scope and complexity.... Applications for major revisions are subject to all the permit application requirements and procedures."
- b. Reg. Sec. 26.4.409 states that permit revisions "shall be obtained" for changes in mining operations or as required after permit review is made by the department (see 26.4.408).
- c. Mont. Code Ann. Sec. 82-4-225 (1980), Reg. Sec. 26.4.1104 and Reg. Sec. 26.4.411 address applications for "increase or reduction of permit area". The



addition of acreage, other than "incidental boundary amendments" are subject to the standard application (and bonding) requirements.

- d. Reg. Sec. 26.4.410 and 26.4.1003 regulate permit renewals.
- e. Reg. Sec. 26.4.412 regulates the transfer of permits.

5. WYOMING

- a. Wyo. Stat. Sec. 35-11-402 (1980). Subsection 35-11-402(a)(x) states that a permit may be revised without public notice or hearing if there are no "significant alterations in the reclamation plan".
- b. Reg.: Chap. XIII, Sec. 1 lists permitting procedures applicable to surface mining operations. Subsection 1(b) states the "[a]ll procedural requirements of [the State's surface mining] Act...shall, unless otherwise provided, apply to permit revisions, amendments, renewals, and transfers."
- c. Reg.: Chap. XIV addresses permit revisions.
Sec. 1: Application requirements states that "the operator may contact the department for a determination of whether an application for a permit revision shall be required...."
- d. Sec. 2 defines "significant deviations" and includes such changes as a "more than twenty percent increase" in affected land, changes in future land use and adverse effects on surface or ground water systems.
- e. Sec. 5. The administrator may request an operator to submit an application for permit revision as a result of an inspection or review of the annual report.
- f. Sec. 6 discusses an exception to certain permit revision procedures for incidental boundary revisions.

ADDITIONAL MATERIALS

OSM TEMPORARY DIRECTIVE, Subject No. REG-29, Transmittal No. 533 (March 28, 1989) entitled "Permit Revisions Following Regulatory Program Modifications.

ATTACHMENTS

A. SMCRA Sec. 511, 30 U.S.C. 1261

B. 30 CFR 774.13 Permit revisions

C. Indiana Regulations and Statutes

- 1. Reg. Sec. 310 IAC 12-3-121 Permit reviews; revisions, renewals, and transfer, sale, and assignment of rights granted under permits; permit revisions
- 2. Reg. Sec. 310 IAC 12-3-5 Permit application filing and deadlines
- 3. Reg. Sec. 310 IAC 12-3-123 Permit reviews; revisions, renewals, and transfer, sale, and assignment of rights granted under permits; completed applications; permit renewals
- 4. Reg. Sec. 310 IAC 12-3-128 Permit reviews; revisions, renewals, and transfer, sale, and assignment of rights granted under permits; succeeding to rights granted under permit; requirements
- 5. 13-4.1-5-4 Permit Terms: Renewal
- 6. 13-4.1-5-5 Permit Terms: Revision of permit



7. 13-4.1-5-8 Permit Terms
- D. Tennessee Regulations and Statutes**
1. 53 FR 49104 (DECEMBER 5, 1988)
 2. 53 FR 26566 (JULY 13, 1988)
 3. 30 CFR 942.744 Revision, renewal; and transfer, assignment, or sale of permit rights
 4. 0400-1-3-.17 Revision of permits
 5. 0400-1-3-.20 Permit renewal
 6. 0400-1-3-.19 Requirements for new permits for persons succeeding to rights granted under a permit
 7. 0400-1-7-.06 Adjustment of amount of bond
 8. Tenn. Code Ann. Sec. 59-8-314 (1982) Revision of permits
- E. West Virginia Regulations and Statutes**
1. W. Va. Code Sec. 22A-3-19 (1985) Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment
 2. Reg. Sec. 7D Incidental Boundary Revisions
 3. Reg. Sec. 3N.01 Permit requirements; revisions; general
- F. Montana Regulations and Statutes**
1. Mont. Code Ann. Sec. 82-4-221 (1980) Coal and Uranium Mine Reclamation; Mining permit required
 2. Reg. Sec. 26.4.409 Permit revisions
 3. Reg. Sec. 26.4.408 Review of existing permits
 4. Mont. Code Ann. Sec. 82-4-225 Application for increase or reduction in permit area
 5. Reg. Sec. 26.4.1104 Bonding; adjustment of amount of bond
 6. Reg. Sec. 26.4.411 Permit amendment
 7. Reg. Sec. 26.4.410 Permit renewal
 8. Reg. Sec. 26.4.1003 Renewal of permits
 9. Reg. Sec. 26.4.412 Transfer of permit
- G. Wyoming Regulations and Statutes**
1. Wyo. Stat. Sec. 35-11-402 (1980) Establishment of standards
 2. Reg.: Chap. XIII, Sec. 1 Permitting procedures
 3. Reg.: Chap. XIV, Sec. 1 Permit revisions; application requirements
 4. Reg.: Chap. XIV, Sec. 2 Permit revisions; criteria for public notice requirements
 5. Reg.: Chap. XIV, Sec. 5 Permit revisions; review of outstanding permits
 6. Reg.: Chap. XIV, Sec. 6 Permit revisions; exceptions
- H. OSM DIRECTIVE, Subj. No. REG-29, Transmittal No. 533 (March 28, 1989).**