

§ 773.4

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[72 FR 68029, Dec. 3, 2007]

§ 773.4 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit issued by the regulatory authority except as provided for in paragraph (b) of this section. A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

(b) *Continuation of initial program operations.* (1) If a State program receives final disapproval under part 732 of this chapter, including judicial review of the disapproval, existing surface coal mining and reclamation operations may continue pursuant to the provisions of subchapter B of this chapter and section 502 of the Act until promulgation of a complete Federal program for the State. During this period, no new permits for surface coal mining and reclamation operations shall be issued by the State. Permits that lapse during this period may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

(2) Except for coal preparation plants separately authorized to operate under 30 CFR 785.21(e), a person conducting surface coal mining operations, under a permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of the Act, may conduct such operations beyond the period prescribed in paragraph (a) of this section if—

(i) Not later than 2 months following the effective date of a permanent regulatory program, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after the expiration of 8 months from such effective date in accordance with the provisions of the regulatory program;

(ii) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit; and

(iii) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Act, subchapter B of this chapter, applicable State statutes and regulations, and all terms and conditions of the initial program authorization or permit.

(3) No new initial program permits may be issued after the effective date of a State program unless the application was received prior to such date.

(c) *Continued operations under Federal program permits.* (1) A permit issued by the Director pursuant to a Federal program for a State shall be valid under any superseding State program approved by the Secretary.

(2) The Federal permittee shall have the right to apply to the State regulatory authority for a State permit to supersede the Federal permit.

(3) The State regulatory authority may review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated by the Federal permit, and to the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the State regulatory authority shall—

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the State program.

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(d) *Continued operations under State program permits.* (1) A permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

(2) Immediately following promulgation of a Federal program, the Director shall review the permits issued under the previously approved State program to determine that the requirements of the Act, this chapter, and the Federal program are not violated. If the Director determines that a permit was granted contrary to the requirements of this Act, the Director shall—

- (i) Inform the permittee in writing;
- (ii) Provide the permittee an opportunity for a hearing;
- (iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and
- (iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program, as prescribed in the Federal program for the State.

[48 FR 44391, Sept. 28, 1983, as amended at 53 FR 11607, Apr. 7, 1988; 54 FR 13823, Apr. 5, 1989. Redesignated at 65 FR 79663, Dec. 19, 2000.]

§ 773.5 Regulatory coordination with requirements under other laws.

Each regulatory program 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 Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*) where

Federal and Indian lands covered by that Act are involved.

[52 FR 4262, Feb. 10, 1987. Redesignated at 65 FR 79663, Dec. 19, 2000]

§ 773.6 Public participation in permit processing.

(a) *Filing and public notice.* (1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under § 774.13, or renewal of a permit under § 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the regulatory authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (b) and (c) of this section.

(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with § 761.14 of this chapter; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice