**Section 1785.18 Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Activities**

a) Scope. This Section shall apply to any person or persons who conducts or intends to conduct combined surface mining activities and underground mining activities, where a variance is requested from the contemporaneous reclamation requirement of 62 Ill. Adm. Code 1816.100.

b) Application contents for variances. Any person who desires to obtain a variance under this Section shall file with the Department complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which:

1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

2) Show how multiple future disturbances of surface lands or waters will be avoided;

3) Identify the specific surface areas for which a variance is sought and the particular Sections of the Federal Act, 62 Ill. Adm. Code 1700-1850 and the regulatory program from which a variance is being sought;

4) Show how the activities will comply with 62 Ill. Adm. Code 1816.79 and other applicable requirements of the regulatory program;

5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

7) Show how off-site storage of spoil will be conducted to comply with the requirements of the Federal Act, 62 Ill. Adm. Code 1816.71 through 1816.74, and the regulatory program.

c) Issuance of permit. A permit incorporating a variance under this Section may be issued by the Department, if it first finds, in writing, upon the basis of a complete application filed in accordance with this Section, that:

1) The applicant has presented, as part of the permit application, specific feasible plans for the proposed underground mining activities;

2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authorities;

4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

5) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by Section 515(b)(16) of the Federal Act, 62 Ill. Adm. Code 1816 and the regulatory program;

6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 62 Ill. Adm. Code 1816.79 and the regulatory program;

7) Provisions for off-site storage of spoil will comply with the requirements of Section 515(b)(22) of the Federal Act, 62 Ill. Adm. Code 1816.71 through 1816.74 and the regulatory program;

8) Liability under the performance bond required to be filed by the applicant with the Department pursuant to 62 Ill. Adm. Code 1800 and the regulatory program shall be for the duration of the underground mining activities and until all requirements of 62 Ill. Adm. Code 1800 and the regulatory program have been complied with; and

9) The permit for the surface mining activities contains specific conditions:

A) Delineating the particular surface areas for which a variance is authorized;

B) Identifying the applicable provisions of Section 515 (b) of the Federal Act, 62 Ill. Adm. Code 1816 and the regulatory program; and

C) Providing a detailed schedule for compliance with the provisions of this Section.

d) Review of permits containing variances. Variances granted by permits issued under this Section shall be reviewed by the Department no later than three (3) years from the dates of issuance of the permit and any permit renewals.

(Source: Amended at 11 Ill. Reg. 8416, effective July 1, 1987)