**Section 2501.25 Reclamation on Private Lands**

Reclamation may be carried out on private land if consent is obtained as provided in Section 2501.28(a), or if the requisite findings are made and notice given pursuant to Section 2501.28(b). When reclamation is to be carried out on private land, the Department shall adhere to the following procedures concerning appraisals, liens, and satisfaction of liens:

a) Appraisals

1) A notarized appraisal of private land to be reclaimed which may be subject to a lien under subsection (b) shall be obtained from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in Regulation 10 of the American Institute of Real Estate Appraisers of the National Association of Realtors, Code of Professional Ethics, as amended November 4, 1989. The appraisal shall state:

A) The estimated market value of the property in its unreclaimed condition; and

B) The estimated market value of the property as reclaimed.

2) This appraisal shall be made prior to the start of reclamation activities, except as provided in subsection (a)(3). The Department shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than six months to complete, an updated appraisal of the estimated market value of the property as reclaimed shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraisal value results in lower increase in value, such lower increase shall be used as the basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien.

3) When any abandoned mine condition presents a high probability of substantial physical harm to the health, safety, or general welfare of people, as set forth in Section 2501.34, before the danger can be abated under normal program operations procedures, reclamation activities or abatement procedures shall not be delayed in order to obtain any necessary appraisal. In such instances, the appraisal shall be obtained at the earliest practical time after reclamation activities or abatement procedures have been commenced.

b) Liens

1) The Department shall place a lien against land reclaimed if the reclamation results in a significant increase in fair market value, except that:

A) *A lien shall not be placed against the property of a surface owner who owned the property prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work* [20 ILCS 1920/2.09];

B) A lien shall be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

C) The Department shall waive the lien if the cost of filing it, including indirect costs to the State, exceeds the increase in fair market value as a result of the reclamation activities.

2) The determination of what constitutes a significant increase in market value of land subject to a potential lien, or what factual situation justifies a waiver of lien, will be made to assure that AML program funds are used to benefit the health, safety, or environmental values of the greater community and avoid windfall profits to owners of reclaimed land. The manner in which the subject property was acquired shall be considered. An increase in total fair market value of less than $8,000, or less than 20 percent of total fair market value before reclamation, shall not be considered significant.

3) A lien shall be waived if findings made prior to construction demonstrate that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit.

4) If a lien is to be filed, the Department shall, within six months after the completion of the reclamation work, file a statement in the Office of the Recorder of Deeds in the County wherein the reclaimed land is located. Such statement shall consist of notarized copies of the appraisal obtained under subsection (a) and shall include an account of moneys expended for the reclamation work. The statement shall state the priority claimed for the lien. The amount reported to be the increase in value of the property shall constitute the lien to be recorded. Provided, however, that prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to repay that amount instead of allowing the lien to be filed against the property involved.

5) Within 60 days after the lien is filed, the landowner may petition the Department, through the Director of the Office of Mines and Minerals, for a hearing to determine the increase in market value of the land as a result of reclamation work. Any party aggrieved by the decision of the Department may seek appropriate judicial relief at the Circuit Court.

c) Satisfaction of Liens

1) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

2) A reclamation lien created pursuant to Section 2.09 of the State Act shall continue in existence until satisfied, subject only to the 40 year limitation period and requirements of Sections 13-118 through 13-121 of the Code of Civil Procedure [735 ILCS 5/13-118 through 13-121].

3) If reclaimed property subject to a reclamation lien is transferred for an actual consideration in excess of the appraised fair market value of the property after reclamation, and the lien is not satisfied at the time of transfer, the Department shall request the Attorney General to bring an appropriate foreclosure action to satisfy the lien.

4) Monies derived from the satisfaction of liens established under this Section shall be deposited in the State fund currently entitled "Abandoned Mined Lands Reclamation Federal Trust Fund."

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)