**Section 1785.16 Permits Incorporating Variances From Approximate Original Contour Restoration Requirements**

a) The Department may issue a permit for nonmountaintop removal steep slope mining which includes a variance from the requirements of 62 Ill. Adm. Code 1816.102, 1816.104, 1816.105, and 1816.107 or 1817.102 and 1817.107 to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the Department finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are met:

1) After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential, or public post-mining land use (including recreational facilities).

2) The requirements of 62 Ill. Adm. Code 1816.133 or 1817.133 will be met.

3) The watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if:

A) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws;

B) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

C) The appropriate State environmental agency approves the plan.

4) The owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under 62 Ill. Adm. Code 1778.15 of this chapter and shall show an understanding that the variance could not be granted without the surface owner's request.

b) If a variance is granted under this section:

1) The requirements of 62 Ill. Adm. Code 1816.133(d) or 62 Ill. Adm. Code 1817.133(d) shall be included as a specific condition of the permit; and

2) The permit shall be specifically marked as containing a variance from approximate original contour.

c) A permit incorporating a variance under this section shall be reviewed by the Department at least every thirty (30) months following the issuance of the permit to evaluate the progress and development of the surface coal mining and reclamation operations to establish that the operator is proceeding in accordance with the terms of the variance.

d) If the permittee demonstrates to the Department that the operations have been, and continue to be, conducted in compliance with the terms and conditions of the permit, the requirements of the Federal Act, 62 Ill. Adm. Code 1700-1850, and the regulatory program, the review specified in subsection (c) need not be held.

e) The terms and conditions of a permit incorporating a variance under this Section may be modified at any time by the Department, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the Federal Act, and the regulatory program.

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