

Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved post-mining land use at the end of the responsibility period.

Also, Illinois' amendment transmittal letter dated November 1, 1995, contains a justification statement with an attached map (Administrative Record No. IL-1663). The map, which is marked as Exhibit #4, shows an example of several small substations which served an underground mine and which had minor disturbances and which were returned to cropland use. In its statement, Illinois references *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144, May 16, 1980) as justification for the proposed regulation. Illinois also attached a memorandum dated September 1, 1995, from the Illinois Department of Agriculture which concurred with the four acre threshold relative to the testing of small isolated areas for revegetation success.

4. 26 IAC 1816.116(a)(4)(A)(ii) Revegetation Standards for Success: Proof of Productivity for Non-Contiguous Areas

Illinois proposes to revise its proposed provision at 62 IAC 1816.116(a)(4)(A)(ii) which would allow the productivity results of a larger field to represent small isolated areas to read as follows.

The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. These areas shall be managed and vegetated in the same manner as the representative field.

In its letter dated November 1, 1995 (Administrative Record No. IL-1663), Illinois stated that “* * * These areas will be vegetated and managed in the same manner as their associated larger field under approved and proper management practices.”

5. 62 IAC 1816.116(a)(4)(D) Revegetation Standards for Hay Production

At 62 IAC 1816.116(a)(4)(D), Illinois proposes to withdraw the following previously proposed language.

Prior successful hay production shall not be affected by deep tillage for crop production.

6. 62 IAC 1816.116(a)(5)/1817.116(a)(5) Wetland Revegetation

In its letter dated April 28, 1995 (Administrative Record No. 1649), OSM requested Illinois to provide a statement and technical support for 62 IAC 1816/1817.116(a)(5) which justifies why a minimum areal coverage of 30 percent for wetlands will be consistent with the revegetation standards for ground cover for areas to be developed for fish and wildlife habitat at 30 CFR 816/817.116(a)(3)(iii).

At the May 31, 1995, meeting (Administrative Record No. 1654), Illinois described a U.S. Fish and Wildlife Service, Biological Services Program, publication on the qualitative values of wetlands with various degrees of emergent vegetation at the 20 to 70 percent levels. The study ranked 70 percent cover as having the lowest value, 50 percent as having the highest value, and 30 percent as having a middle value. Illinois stated its belief that attainment of the 30 percent level of areal vegetation cover is adequate to establish a valuable wetland which is likely to improve with time, justifying its use as a revegetation success standard.

Illinois submitted the publication, which was entitled “Classification of Wetlands and Deepwater Habitats of the United States,” U.S. Department of the Interior, Fish and Wildlife Service, Biological Services Program, FWS/OBS-79/31, December 1979, to OSM on June 8, 1995 (Administrative Record No. 1653). Illinois, also, submitted two additional reference documents in support of its wetlands revegetation standards: (1) Vol. II of “Wetland Creation and Restoration—The Status of the Science,” U.S. Environmental Protection Agency, Environmental Research Laboratory, EPA 600/3-89/038b, October 1989, (Administrative Record No. IL-1650) and (2) Journal of Wildlife Management, 1981, University of Michigan Study, Dabbling Duck and Aquatic Macroinvertebrate Responses to Manipulated Wetland Habitat, J. Wildl. Manage. 45(1):1981 (Administrative Record No. IL-1650B).

7. 62 IAC 1816.116(c) and 1817.116(c) Use of Reference Areas for Determining Revegetation

Illinois proposes to withdraw its proposed regulations at 62 IAC 1816.116(c) and 1817.116(c) concerning the use of a reference area in lieu of the Agricultural Lands Productivity Formula Target Yields to determine the success of revegetation for cropland and hayland.

8. 62 IAC 1816.Appendix A Agricultural Land Productivity Formula

a. Under the heading “Permit Specifics—Yield Standard”, Illinois proposes to modify sections (a) and (b) to clarify that target yields are calculated by “pit” rather than “permit.” Therefore, Illinois proposes to change the words “permit,” “mine permit area,” and “permit area” to “pit.”

Illinois, also, submitted examples for the justification of consolidating yield targets by pit rather than permit in its November 1, 1995, submittal (Administrative Record No. IL-1663). Exhibit #1 is a composite map identifying 18 pits which are included in ten permits whose reclamation plans are developed on a pit basis to balance prime farmland, and high capability land liability. Exhibit #2 is a printout of the base yield targets from a mine with a pit which was originally contained under three separate contiguous permits. Later, all three permits were repermited under one large permit. As a result, the yield targets were consolidated due to the repermitting. The yield differences between permits and the mean varied approximately 5 percent. Exhibit #3 is a printout of the base yield targets from a mine with a pit which was originally contained under two separate contiguous permits. These permits were not consolidated under one permit; however, as the small acreage permit represented just the last few years of mining and included the final cut impoundment, some of the cropland liability was located into the older permit. In other words, the actual soils and liability accrued were moving across permit lines. A composite yield target based on a pit concept reflects the actual way the soil was handled.

b. Illinois proposes to change previously proposed section (e) to (c) and proposes to revise the language as follows:

After mining operations have ceased, the Department shall recalculate the yield standards for the pit based solely on the soils which were disturbed. Recalculated targets shall be applicable to all areas tested for productivity subsequent to the recalculation. Approved significant revisions after permanent cessation of mining shall cause the targets to be recalculated and applied to productivity fields tested after the recalculation.

c. Illinois proposes to withdraw previously proposed sections (c), (d), and (f).

G. 62 IAC 1848.5 Notice of Hearing

At 62 IAC 1848.5(f), Illinois proposes to withdraw the following previously proposed sentence.