

207.9 Permit approval or denial.

1. Upon the basis of a complete mining application and reclamation plan or a revision or renewal, the division shall grant, require modification of, or deny the application for a permit in a reasonable time set by the division and notify the applicant in writing. The applicant shall have the burden of establishing that the application is in compliance with all the requirements of [this chapter](#). Within ten days after granting of a permit, the division shall notify the political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

2. A permit or revision application shall not be approved unless the application affirmatively demonstrates and the division finds in writing on the basis of the application or other information documented in the approval, and made available to the applicant, the following:

a. The permit application is accurate, complete and in compliance with all the requirements of [this chapter](#).

b. The applicant has demonstrated that reclamation as required by [this chapter](#) and the state program can be accomplished under the reclamation plan contained in the permit application.

c. The division has assessed the probable cumulative impact of all anticipated mining in the area on the hydrologic balance and the proposed operation has been designed to prevent material damage to hydrologic balance outside permit area.

d. The area proposed to be mined is not included within an area designated unsuitable for coal mining or is not within an area proposed for such designation.

e. If the private mineral estate has been severed from the private surface estate, the applicant has submitted any of the following:

(1) The written consent of the surface owner to the extraction of coal.

(2) A conveyance that expressly grants or reserves the right to extract the coal by surface mining.

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship as determined in accordance with state law. [This chapter](#) does not authorize the division to adjudicate property rights disputes.

3. The applicant shall file with the permit application a schedule listing any and all notices of violations of [this chapter](#) and any law or rule of the federal or a state government pertaining to air or water environmental protection incurred by the applicant in connection with a coal mining operation during the three previous years. The schedule shall also indicate the final resolution of the notice of violation. If any information available to the division indicates that a coal mining operation owned or controlled by the applicant is currently in violation of [this chapter](#) or the other laws referred to in [this subsection](#), the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority which has jurisdiction over the violation and the permit shall not be issued to an applicant after a finding by the division after an opportunity for a hearing that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of [this chapter](#).

4. If the area proposed to be mined contains prime farmland, the division shall, after consultation with the United States secretary of agriculture, and pursuant to regulations issued by the secretary with the concurrence of the secretary of agriculture, grant a permit to mine on prime farmland if the division finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards established by [section 207.7](#). Any operator who mines coal on agricultural land shall restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined agricultural land of similar quality in the surrounding area under equivalent levels of management.

5. Within sixty days a person having an interest which is or may be adversely affected

may appeal to the committee the decision of the division granting or denying a permit as a contested case under [chapter 17A](#).

[C81, §83.9]

C93, §207.9