



Kentucky  
Department for Surface Mining  
Reclamation and Enforcement

# Reclamation Advisory Memorandum

From: William J. Grable, Commissioner

Date: May 22, 1990

Subject: Implementation of 1990 Legislation

## RAM # 101

In the 1990 session of the Kentucky General Assembly, several laws were enacted that will affect the coal mining regulatory program under KRS Chapter 350. These new laws will take effect on July 13, 1990. As soon as possible, the Cabinet will revise its regulations to conform to the new laws. However, several of the new laws contain specific provisions which the Cabinet must begin to enforce on July 13, 1990, whether or not the Cabinet has revised its regulations. These new laws will take precedence over any conflicting regulations. The purpose of this RAM is to identify these new provisions and give notice that the Cabinet must begin to enforce them on July 13, 1990.

### INCIDENTAL BOUNDARY REVISIONS

Two identical bills (S.B. 256 and H.B. 519) were enacted which establish new requirements for incidental boundary revisions to permits.

The maximum size of incidental boundary revisions is set at ten percent (10%) of the original permit acreage or twenty (20) acres, whichever is less. The cumulative acreage added by successive incidental boundary revisions cannot exceed these limits. For underground mines, surface disturbances and underground operations are considered separately. An underground mine can obtain additional surface disturbances up to 10% of the surface disturbance acreage in the original permit or 20 acres, whichever is less; and additional underground operations up to 10% of the underground acreage in the original permit or 20 acres, whichever is less.

Further, incidental boundary revisions must be processed as minor permit revisions if they meet certain criteria. Incidental boundary revisions must be deemed minor revisions if they:

- a. do not exceed ten percent (10%) of the initial permit acreage;
- b. are contiguous with the permit acreage;
- c. are within the same watershed as the initial permit acreage;
- d. are required for an orderly continuation of the mining operation;
- e. cover the same coal seam or seams as in the permit;
- f. would only involve lands for which the hydrologic and geologic data and the probable hydrologic consequences analysis contained in the permit are applicable to the proposed incidental boundary revision;
- g. would not involve properties designated as unsuitable for mining, or any properties eligible for listing on the National Register of Historic places;
- h. would not involve any of the special categories of mining listed in 30 CFR Part 785 including, but not limited to, prime farmland and coal preparation plants, unless the approved permit already includes the relevant category;
- i. would not constitute a change in the method of mining; and
- j. would be reclaimed in conformity with the initial reclamation plan.

ILLEGAL MINING

S.B. 149 and S.B. 205 contain provisions that will greatly assist the Cabinet in combatting illegal mining. Here are the principal effects of these bills.

1. The amount of coal that can be mined in a twelve-month period without a permit is reduced from 250 tons to 25 tons.
2. The amount of coal that a landowner can remove in a twelve-month period for his own personal use from land owned or leased by him, is reduced from an unlimited amount to fifty (50) tons.
3. The amount of coal that can be removed in coal exploration operations without an exploration permit is reduced from 250 tons to 25 tons.
4. Where more than 25 tons of coal are removed during coal exploration operations, it is illegal to willfully and knowingly receive, transport, sell, convey, exchange, transfer, trade, donate, deliver or otherwise convert to a commercial use any coal extracted during the operations, except when the Cabinet has granted prior written approval for the purpose of testing or determining the properties of the coal.
5. It is illegal to willfully and knowingly receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required in KRS 350.060.
6. The new law allows, rather than requires as at present, the Special Investigations officers of the Cabinet to seize instrumentalities used in illegal mining and exploration.
7. The present law requires that upon conviction of any person for willfully and knowingly conducting illegal mining or exploration, the court must order the instrumentalities used in furtherance of the crime to be forfeited and sold at public auction and the proceeds must be deposited in the illegal mining reclamation fund. The new law extends these requirements to the willful and knowing receipt, transport, sale, conveyance, exchange, transfer, trade, donation, delivery, etc., of coal removed during illegal mining or exploration as discussed in items 4 and 5 above.
8. The present law makes illegal mining and coal exploration (except core drilling) a Class D felony, punishable by mandatory imprisonment for one to five years and a possible fine of up to ten thousand dollars (\$10,000). The new law also makes it a Class D felony to willfully and knowingly receive, transport, sell, convey, exchange, transfer, trade, donate, deliver, etc., coal removed during illegal mining or exploration as discussed in items 4 and 5 above.

S.B. 141 clarifies that a person who is engaged in mining or coal exploration without obtaining the required permit who fails to timely abate a cited violation will be issued a failure-to-abate cessation order and be assessed a penalty of not less than \$750 for each day the violation remains unabated, in addition to the other civil and criminal penalties and sanctions which apply. This clarification insures that illegal operators will not be subject to less severe penalties than legal operators when they fail to correct environmental damage.

### HEARINGS

S.B. 249 extends the time period from seven (7) days to fourteen (14) days in which parties to a formal hearing before the Cabinet may file exceptions to the hearing officer's report. It also clarifies that the Cabinet Secretary must consider filed exceptions before he issues a final Order.

S.B. 154 clarifies that a permit applicant may request a hearing if any part of a permit application, not just the mining and reclamation plan part of the application, is denied by the Cabinet.

Again, please note that the new laws discussed above will take effect on July 13, 1990, and the Cabinet must begin enforcing them at that time. If you have any questions, please do not hesitate to contact me or other appropriate personnel of the Cabinet.

To obtain copies of the bills discussed above, please contact:  
Kentucky Legislative Research Commission  
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