



Kentucky
Department for Surface Mining
Reclamation and Enforcement

Reclamation Advisory Memorandum

From: William J. Grable, Commissioner

Date: August 29, 1990

Subject: Operator Other Than Permittee

RAM # 102

Under 405 KAR 8:030 and 8:040, Section 2, applications for permits must fully identify the operator, if different from the applicant, who will conduct mining activities on behalf of the applicant. After issuance of the permit, the permittee is required to notify the department if the permittee intends to use an operator other than the operator approved in the permit, so the department can verify that the proposed new operator is eligible to conduct coal mining operations in Kentucky.

It has come to our attention that some permittees may have begun to use an operator other than the operator approved in the permit, without properly notifying the department. As a result, the department must now begin a series of steps to ensure that all changes in operators are properly reported to the department and that all current operators are eligible to conduct operations. To that end, the following procedures are being implemented.

1. In the past, some permit applications were approved in which the applicant stated he would use an operator to be identified after permit issuance. This procedure is being modified. Hereafter, if the application does not fully identify a specific proposed operator, the permit or amendment will be issued with the condition that the permit or amendment is not valid until the permittee has fully identified a specific proposed operator and the department has determined that the proposed operator is eligible to conduct coal mining operations in Kentucky and has so notified the permittee in writing.
2. Effective immediately, each permit or amendment in which the department approves a specific proposed operator will be issued with the condition that the permittee must notify the department within ten (10) working days of any subsequent change in the operator, and failure to timely provide the required notification will make the permittee subject to the issuance of a notice of noncompliance.
3. The department is providing a new form to facilitate notification of operator changes. The attached notification form SMP-11, 8/90, must be used for all notifications pertaining to permits already issued.

If a permit application is pending and there is a change in the proposed operator, the applicant must correct the application by updating Item 3., "OPERATOR INFORMATION," on page seven (7) of the permit application form SMP-01-R, 11/85. Additionally, if the pending application is an amendment, revision, or renewal, form SMP-11 must also be submitted.

Please note that no fee is required to be submitted with the notification form or the corrected application form.

4. When the department receives proper notice of an operator change, the department will promptly update its computer records relating to the operator and the permittee. When the department determines whether or not the operator is eligible to conduct coal mining operations in Kentucky, the department will promptly notify the permittee and the operator in writing.
5. For all existing permanent program permits which have not yet had a Phase I bond release, if the current operator has not been approved in the permit, the permittee must notify the department (using the attached form SMP-11) as follows:
 - a. Underground mines -- notify DSMRE by October 15, 1990.
 - b. All other operations -- notify DSMRE by November 15, 1990.
6. If a permittee notifies the department by the appropriate date in item 5, and the department subsequently determines that the current operator is not eligible to conduct coal mining operations, the department will notify the permittee and the operator of the violations which make the operator ineligible and may provide the permittee a grace period of sixty (60) calendar days in which the permittee may either:
 - a. demonstrate to the satisfaction of the department that the operator is eligible to conduct coal mining operations; or
 - b. terminate the activities of the operator on the permit area.

If at the end of the sixty (60) calendar days the permittee has not made the necessary demonstration or terminated the activities of the operator, the department will issue a notice of noncompliance to the permittee, and will notify the operator, requiring that within thirty (30) calendar days the permittee shall demonstrate that the operator is eligible to conduct operations or shall terminate the activities of the operator. If at the end of the thirty (30) calendar days the permittee has not made the necessary demonstration or terminated the activities of the operator, the permittee will be subject to issuance of an order for cessation and immediate compliance, requiring termination of the activities of the operator.
7. If a permittee does not properly notify the department by the appropriate date in item 5, and the department has reason to believe that the current operator on the permit area is not the operator approved in the permit, the department will issue a notice of noncompliance to the permittee, requiring that within thirty (30) calendar days the permittee shall demonstrate that the current operator is the operator approved in the permit; or, if the current operator is not the operator approved in the permit, shall fully identify the current operator and shall demonstrate that the current operator is eligible to conduct operations; or shall terminate the activities of the operator. If at the end of the thirty (30) calendar days the permittee has not made the required demonstration or terminated the activities of the operator, the permittee will be subject to issuance of an order for cessation and immediate compliance, requiring termination of the activities of the operator.

If you have questions about these procedures, please do not hesitate to contact Mary Belle Fisher in the Division of Permits at (502)564-2320, or Keith Smith in the Division of Field Services at (502)564-2340.

Commonwealth of Kentucky
Natural Resources and Environmental Protection Cabinet
Department for Surface Mining Reclamation and Enforcement

NOTIFICATION OF OPERATOR CHANGE

1. IDENTIFICATION OF APPLICANT/PERMITTEE

1.1 Application/Permit No. _____

1.2 Applicant/Permittee Name _____

Complete Mailing Address _____

Telephone () _____

2. IDENTIFICATION OF PREVIOUS/APPROVED OPERATOR

2.1 Operator Name _____ Telephone () _____

Address _____

2.2 Last date of operator activities on permit _____

3. IDENTIFICATION OF PROPOSED/NEW OPERATOR

3.1 First date of operator activities on permit _____
(Estimated date if operator has not yet begun activities)

3.2 Operator Name _____ Telephone () _____

Address _____

3.3 If business is conducted under an assumed name, attach a copy of the certificate of assumed name and list the county where that name is registered _____. Identify attached certificate as "Attachment 3.3.A."

3.4 Operator's resident agent in Kentucky for service of process:

Name _____ SS No. _____

Address _____

Telephone () _____

Application/Permit No. _____

3.5 Indicate operator's legal structure: () Single Proprietorship

() Partnership () Corporation () Other

3.6 If operator is a partnership, attach a certified copy of the partnership agreement. If a corporation, list state where incorporated _____. If incorporated in Kentucky, attach a certified copy of the certificate of incorporation from the secretary of state. If an out-of-state corporation, attach a certified copy of the certificate of authority to conduct business in Kentucky from the secretary of state. Identify attached document as "Attachment 3.6.A."

3.7 If operator is a single proprietorship, list owner. If a partnership, list all partners. If a corporation, list all officers, directors, persons performing a function similar to a director, and persons owning of record ten percent (10%) or more of any class of voting stock of the operator. If other, list all owners and principals:

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Application/Permit No. _____

Item 3.7, continued:

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

Name _____ Title _____ SS No. _____

Address _____

If additional pages are necessary, identify as "Item 3.7 continued."

3.8 Attach a list of all names under which the operator or any individual named in Item 3.7 operated a coal mining operation in the United States within five (5) years preceding the date of this notice, or five (5) years preceding the first date the operator began activities on this permit, whichever is earlier. Identify the attached list as "Attachment 3.8.A."

3.9 If held for this permit, list:

Operator's MSHA Identification No. _____

Operator's Ky. Dept. of Mines and Minerals License No. _____

3.10 Attach a list of all coal mining permits in the United States issued or pending issuance to the operator or any individual identified in Item 3.7 within five (5) years preceding the date of this notice, or five (5) years preceding the first date the operator began activities on this permit, whichever is earlier. For each permit, list the name of the regulatory authority, permittee name, permit number, and date of issuance. Identify the attached list as "Attachment 3.10.A."

Application/Permit No. _____

4. APPLICANT/PERMITTEE/AUTHORIZED AGENT SIGNATURE

The undersigned, being first duly sworn, states that: All statements and representations made in this notification are true and correct.

Applicant/Permittee/Agent* Name _____

Title _____ Telephone () _____

Applicant/Permittee/Agent* Signature _____

Date of signature _____

SUBSCRIBED AND SWORN TO BEFORE ME BY _____,

THIS THE _____ DAY OF _____, 19____.

NOTARY PUBLIC _____

MY COMMISSION EXPIRES _____

5. OPERATOR/AUTHORIZED AGENT SIGNATURE

The undersigned, being first duly sworn, states that: All statements and representations made in this notification are true and correct.

Operator/Agent* Name _____

Title _____ Telephone () _____

Operator/Agent* Signature _____

Date of signature _____

SUBSCRIBED AND SWORN TO BEFORE ME BY _____,

THIS THE _____ DAY OF _____, 19____.

NOTARY PUBLIC _____

MY COMMISSION EXPIRES _____

*NOTE: If other than president or secretary of a corporation, attach a notarized copy of power of attorney, or resolution of board of directors which grants to the individual whose signature appears above, the legal authority to represent the applicant/permittee or operator in this notification. (Does not apply to single proprietorship or partnership.)

MAIL THIS COMPLETED FORM SMP-11 TO: Management Support Branch, DSMRE Division of Permits, #2 Hudson Hollow, Frankfort, KY 40601.