



Kentucky
Department for Surface Mining
Reclamation and Enforcement

Reclamation Advisory Memorandum

From: Dave Rosenbaum, Commissioner

Date: February 8, 1994

Subject: Use of Entity Files for Reference in MPA-01

RAM # 112

In November 1991, the Kentucky Department for Surface Mining Reclamation and Enforcement (DSMRE) implemented the "ownership and control" regulations. Prior to full implementation, the Department held a series of informational seminars to distribute the revised application forms and to discuss the changes brought about by the new regulatory requirements.

At the time of the seminars, the DSMRE committed to look at the entire process and to develop procedures to minimize the amount of information which must be submitted as part of the ownership and control review process. In response to this commitment the Department has developed an optional new procedure which allows a company to establish an ENTITY based ownership and control file instead of having to submit complete ownership and control information in each application.

As you are well aware, the DSMRE has for years maintained its permitting and enforcement records by permit number. With the establishment of the entity-based ownership and control files, the Department will continue to maintain permit and enforcement files by permit number but ownership and control information under this new procedure will be maintained by the company's DSMRE ID Number. This number is the six (6) digit, computer generated number assigned by the Division of Permits, which applicants are currently using in their permit applications.

Current ownership and control review procedures allow applicants to use affidavits to verify that certain information required in an MPA-01 is the same as in a previously approved permit application. While this procedure is much better than having to supply complete applications each time, it still leaves much to be desired for efficient processing of permit applications. The purpose of this RAM is to provide a second option for permittees wishing to use affidavits which should be more desirable from the industry perspective while simplifying DSMRE's procedures. The end result of this procedure will allow companies to establish a centralized entity reference file with the Department.

OPTIONAL NEW PROCEDURE

In brief, the new procedure will work like this:

1. The Department will establish for each company that requests it, an "**Entity Reference File**" that will contain the ownership and control information and other non-permit-specific information for that entity. This file will be kept in the Frankfort central office, with a copy in each regional office where the entity has permitting activity.
2. The company will keep its entity reference file up-to-date by timely reporting changes to the information in that file.
3. Each subsequent permit application by the entity will require submission of a permit-specific MPA-01 to identify the information such as surface and mineral owners, and other license information, but will simply refer to the entity reference file for the majority of the ownership and control information.

To initially establish its entity reference file a company must submit a MPA-01 that contains the completed items listed below. Since the entity reference file is not a permit-specific document, the spaces for permit number on the form should be left blank.

Entity Reference File MPA-01

Entity ID#
Item 1.1 through Item 1.10
Item 1.12 through Item 1.16
Item 1.24

Thereafter, if the entity's ownership and control changes, the company must submit updated information that identifies all the changes as well as submitting a new reference MPA-01.

It is very important to note that the legal structure of the entity (single proprietorship, partnership, corporation, etc.) will determine how these updates must be filed.

For corporations, the company must file an MPA-06 to identify changes in corporate owners, officers or directors and a new MPA-01 form reflecting the new complete corporate structure.

For single proprietorships, general partnerships and other legal structures, any change in ownership or controlling interest will in most cases require creation of a new entity reference file and will almost always necessitate the transfer of all permits held by the old entity. In such cases it is advisable to contact the Ownership and Control Review Branch to determine what will be required.

When an application is submitted that refers to the entity reference file, it must include an abbreviated MPA-01 form that provides the required permit-specific information and an affidavit that refers to the latest information in the entity reference file by its unique identifying number. The following items must be completed in the abbreviated MPA-01 form. Except for the first two pages and the signature page, any page may be omitted from the application package if all the items on that page are answered in full by referring to the entity reference file.

Permit-Specific MPA-01

Item 1.1

Item 1.2

Item 1.4

Item 1.11

Item 1.17 through Item 1.24

Affidavit

Updates to any item that has changed since the latest MPA-01 form was placed in the Entity Reference File

Since the lists of issued permits, pending applications and violations change frequently the permit-specific MPA-01 will most likely need to be updated for those items of the application. For those updates it is acceptable to list only those permits, applications or violations which have occurred since the filing of the Reference MPA-01.

(A company that is an operator but is not a permittee can also take advantage of this procedure. Instead of filing an MPA-01 form the company will use an MPA-02 form "Operator Information for a Mining Permit." All items of the MPA-02 must be completed, because it contains no permit-specific information.)

The Department's review of an application using an entity reference file will not differ in substance from its review of any other application. The Ownership and Control Review Branch must conduct a full review of both the reference and the permit-specific MPA-01 to ensure the application is accurate. Special attention will be placed on ensuring the reference file is current with respect to:

1. Corporate information, including current Annual Report filed with the Secretary of State;
2. Officers, directors, and owners listed in reference are still correct and agree with SMIS, AVS, MSHA, KYM&M, etc.; and
3. Issued permits, pending applications, and violations have been updated.

One aspect of this new procedure which should simplify the use of affidavits is that it will no longer be necessary to replace the original affidavit submitted within a permit application simply due to the filing of a new corporate change. Since the regulations require the applicant to either verify that the information contained in the application is still correct or to make any necessary updates, it will be acceptable for the final affidavit just prior to issuance to refer to the most recently filed corporate change, by number, in the entity reference file.

If you have any questions on these new procedures you may contact Mary Belle Fisher, Jim Adamson or Jeffery O'Dell of the Ownership and Control Review Branch.