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COMMONWEALTH OF KENTUCKY
DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
BUREAU OF SURFACE MINING RECLAMATION AND ENFORCEMENT
GENE BRANDENBURG
COMMISSIONER
FRANKFORT, KENTUCKY 40601

RECLAMATION ADVISORY MEMORANDUM NO. 15

TO: BSMRE Division Directors and Regional Engineers
Coal Operators and Company Engineers
Consulting Engineers

FROM: Gene Brandenburg, Commissioner *Gene Brandenburg*
Bureau of Surface Mining Reclamation
and Enforcement

DATE: November 12, 1979

SUBJECT: Surface disturbances within 100 feet of outside
right-of-way line of public road; existing
underground mines; requirement for public notice
and opportunity for public hearing

405 KAR 1:050, Section 6(6) and 405 KAR 3:050, Section 6(6) provide that the department shall not approve mining operations within 100 feet of the outside right-of-way line of public roads, except where mine roads join such public rights-of-way, unless the department finds after a public notice and opportunity for a public hearing in the locality that the interests of the public and the affected landowners will be protected.

Section 522(e)(4) of P.L. 95-87, upon which was based the corresponding requirement of KRS 350.085(4) as amended by the 1978 Kentucky General Assembly, provides an identical restriction on disturbances within 100 feet of public road rights-of-way, except that such restriction is effective upon the effective date of the Act (August 3, 1977) and the restriction is subject to valid existing rights. The effect of this exception is that only operations begun after August 3, 1977 are subject to the 100-foot restriction in P.L. 95-87.

The effective date of the 1978 Kentucky General Assembly's revision of KRS 350.085(4) was May 3, 1978. KRS 350.085(4) contained a prohibition against strip mining within 100 feet of a public road since 1966. However, the first express prohibition against conducting surface operations of underground mining within 100 feet of public road rights-of-way was effective with adoption of 405 KAR 3:050 as emergency regulations effective May 3, 1978.

Policy

It is not the intent of 405 KAR 3:050, Section 6(6) that existing (on May 3, 1978) surface operations of underground mining in place within 100 feet of public road rights-of-way be subjected to the requirements for public notice and opportunity for public hearing prior to approval by the department. However, all new (begun after May 3, 1978) surface operations of underground mining, including all surface operations of new underground mines and all new or extended surface operations of existing underground mines, have been and will continue to be subject to the requirements for notice and opportunity for public hearing as set forth in 405 KAR 3:050, Section 6(6) in order to insure that the interests of the public and affected landowners will be protected.

SUBJECT: Spoil Disposal Regulations, 405 KAR 1:141 and 3:111; Contemporaneous Reclamation Regulation 405 KAR 1:260

On November 7, 1979, the Administrative Regulations Review Subcommittee of the legislature approved and filed 405 KAR 1:141 and 3:111. These regulations are effective as of November 7, 1979. These regulations are the same as 405 KAR 1:141E and 3:111E, promulgated as emergency regulations on June 26, 1979, which expired on October 24, 1979.

At the request of the department, the subcommittee deferred action on 405 KAR 1:260, Contemporaneous Reclamation, until December 5, 1979. The deferral was requested in order to provide time for the department to consider suggested amendments.