



From: Steve Hohmann, Commissioner

Date: February 6, 2012

Subject: Service of DMRE Documents

# Reclamation Advisory Memorandum RAM # 152

**Effective Date: March 1, 2012**

**Notice: This Reclamation Advisory Memorandum (RAM) supersedes and replaces RAM # 146 as issued on May 7, 2010, due to the promulgation of amended regulations pertaining to the service of enforcement documents and notices of proposed penalty assessments by the Division of Mine Reclamation and Enforcement.**

On February 4, 2011, 405 KAR 12:020, Section 5(2) was amended by the Cabinet's Secretary to conform to KRS 350.130, as revised, and now provides in addition to the delivery of documents by certified mail, the option of sending such documents by electronic mail. As always, the preferred method of service of the Cabinet' enforcement documents is by hand delivery to the person in charge of the operation, or if no one is in charge, to an employee or agent at the site.

The Cabinet's Secretary also promulgated amendments to 405 KAR 7:091, Section 5, 7:095, Section 5, and 7:085, Section 6. As amended these regulations give the Cabinet the option of sending any of its enforcement documents including notices of proposed penalty assessments by electronic mail to the email address provided by the surface mining or non-coal permittee.

With this RAM, the Department, in a continuing effort of saving taxpayer funds and providing prompt and effective notice of its actions to the permittees, is now implementing a procedure by which notices of proposed penalty assessment and related worksheets will be sent by electronic mail in conformity with KRS 350.130(1).

Please note the procedures set out in RAM 146 are re-incorporated into this RAM with the Division of Mine Reclamation and Enforcement (the Division) now providing a new service of sending notices of proposed penalty assessment by electronic mail. DMRE will continue to send its enforcement documents by email to those entities that submitted to the Division a Form SME-101(Delivery of Documents by Email), if the enforcement documents cannot be hand delivered.

### Procedures

- Upon the effective date of this RAM, the Division will continue to hand-deliver its enforcement documents to the individual who, based upon reasonable inquiry by the Cabinet's authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the document. If no such individual can be located at the site, a copy of the document will be tendered to an individual at the site who appears to be an employee or agent of the person to whom it has been issued. Consistent with past policy, the Division will continue to send a copy of the enforcement documents to the company / permittee and surety by regular mail.
- In cases where a copy of the enforcement document has been hand delivered only to a representative of the operator, (and not the permittee) the Division will mail a copy of the enforcement documents to the permittee by certified mail, return receipt requested, to the address provided in the permit application or by electronic mail, if the permittee has filed a SME-101 form.
- If hand-delivery cannot be made as outlined above, the Division will send the enforcement document by certified mail, return receipt requested: (a) to the person to whom the permit has been issued and addressed to the permanent address shown on the application for a permit, or if no address is shown on the application, then to the address known to the Cabinet; or (b) to the person's designated agent for service.
  - As a preferred alternative means of service to the foregoing, the Division will send its enforcement documents by electronic mail to the address provided to the Cabinet by the permittee on SME-101.
  - As provided in 405 KAR 12:020, Section 5 (2), service, either by hand or certified mail, shall be complete upon the tendering of the document and service shall not be deemed incomplete because of refusal to accept.
  - In instances of service by electronic mail, service will be deemed complete upon delivery of the notice or order to the recipient's email inbox mail as electronically communicated to the Division by an electronic registered receipt. If the email delivery fails due to an invalid address, the Division will serve the document on the permittee by certified mail, return receipt requested.
- Using the procedures outlined above, the Division will also send its notices of penalty assessment documents and related worksheets by electronic mail to any permittee that had previously filed with the Division a SME 101 form.

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Although over 140 permittees have filed with the Division an SME-101, there are still a number of permittees that have not taken advantage of this service. A permittee who wants to receive the Division's documents, including enforcement documents and notices of proposed assessment by email, must submit a SME-101 form (to the Division of Mine Permits, Attention: Supervisor, Ownership and Control Section. A copy of this form is attached to this RAM. The enrollment form is also available on the Division's website at <http://www.minepermits.ky.gov/electronicforms/>. The form must be signed by an authorized agent of the Permittee. As required by RAM 100, the Division must be notified in writing of any change in email address

Questions pertaining to this RAM should be directed to Director of the Division of Mine Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky, 40601, by phone at (502) 564-2340.

Attachment: SME-101 Form