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SECRETARY



JULIAN M. CARROLL
GOVERNOR

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. 17

TO: All Regional Engineers
Coal Operators and Company Engineers
Consulting Engineers
Coal Operator Associations
BSMRE Directors

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

DATE: December 10, 1979

SUBJECT: Incremental Bonding

On December 7, 1979, Governor Julian Carroll put an emergency incremental bonding regulation in place by Executive Order. The regulation is designed to bring immediate relief from some of the bonding problems presently being experienced by many operators.

Governor Carroll's action came at the request of Secretary Frank Harscher, who advised the Governor by letter dated December 7, that an emergency existed in that it was extremely difficult for operators to get bonds or was extremely burdensome financially for them to do so. Secretary Harscher had received a recommendation from the department's Permitting and Bonding Task Force to move forward with an incremental bonding procedure.

Governor Carroll and Secretary Harscher are confident that this incremental bonding regulation will insure adequate reclamation while helping to ease the operator's burden in obtaining and financing adequate bonding.

December 10, 1979

Incremental bonding is fairly simple. The operator will be required to show that he can conduct his permitted operation in a number of clearly defined increments. Each increment will be bonded prior to the mining of that increment. Partial bond release from successful backfilling and grading on previously mined increments in the permit area can be applied to the required bond for succeeding increments, thus helping to limit the total amount of capital tied up in a bond at any one time. The department believes this will provide a bonding process which will be much more equitable for operators, although it will complicate the department's record keeping procedures. The Bureau of Surface Mining Reclamation and Enforcement will from time to time be publishing guidance documents to describe the incremental bonding process in more detail and to explain how the process can be used to the operator's best advantage.

A copy of the emergency regulation is attached for your information. If you have questions about the incremental bonding process, please feel free to contact Mr. Ralph Waddle, Director, Division of Permits, at (502) 564-2320.

The emergency regulation will expire after 120 days, but prior to that time should be replaced by a regulation filed with the Legislative Research Commission in the regular promulgation process. We will keep you advised regarding that filing.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining
Reclamation and Enforcement

405 KAR 1:051E. Incremental bonding.

RELATES TO: KRS 350.060

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.060 requires the Department for Natural Resources and Environmental Protection to adopt reasonable bonding regulations to cover the cost of reclamation instant to the strip mining of coal. This regulation sets forth procedures and requirements related to the incremental bonding of such permits for surface mining permits.

Section 1. Incremental bonding. (1) A surety satisfactory to the department may be considered, in the discretion of the department, a bond payable in a penal sum to the department to be determined by the department incrementally; provided that any applicant shall, as a permit condition, file with the department pursuant to 405 KAR 1:050 a backfilling and grading plan, a plan for handling waste materials and a revegetation plan sufficient to indicate to the department that the applicant will follow the proposed method of operation and other requirements as set forth by the department.

(2) Bonds issued pursuant to subsection (1) shall be determined by taking into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, and reclamation to be required; provided that the applicant shall identify as part of his plan of operation increments of area of land affected on which he will conduct his operation; and provided further that the applicant shall confine his operations to the identified and bonded increments at all times while operations are conducted on the site.

(3) For purposes of posting the incremental bonds pursuant to subsections (1) and (2), the department shall propose, and the applicant shall agree, to the posting of each additional incremental bond as operations are conducted on each subsequent increment on the site. The department shall publish from time to time procedures and documents to implement this regulation.

(4) The total amount of bond in effect during an operation as set pursuant to this regulation shall at all times be sufficient to reclaim the total disturbed area; provided that the total bond in effect shall be applicable to the total disturbed area and adequate to cover the cost of reclamation of the total disturbed area.

Adopted: December 7, 1979

SUBMIT COMMENT OR REQUEST FOR HEARING TO:

James R. Villines, Director
Division of Standards and Specifications
Bureau of Surface Mining Reclamation
and Enforcement
Room 320, Capital Plaza Tower
Frankfort, Kentucky 40601