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SECRETARY



John Y. Brown, Jr.  
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. 20

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

FROM: Gene Brandenburg *Gene Brandenburg*  
Commissioner

DATE: March 25, 1980

SUBJECT: 1980 Kentucky General Assembly Passage of Primacy Legislation  
Automatic Extension of Valid Interim Permits  
Cutoff Date for Filing Interim Program Permit Applications

On March 21, 1980 Governor John Y. Brown signed into law House Bill No. 566 as amended by the Senate. This is the "primacy" bill, which brings the Kentucky statutes into conformance with P.L. 95-87, the federal "Surface Mining Control and Reclamation Act of 1977", and gives Kentucky the statutory authority to assume primary responsibility for regulating surface coal mining operations under the federal Act. Although House Bill 566 became law when signed by Governor Brown, the new provisions in the bill do not actually take effect unless and until the U. S. Secretary of the Interior approves the entire Kentucky program and grants primacy to the Commonwealth. The earliest date at which Kentucky could receive primacy is September 3, 1980.

The one portion of the bill which took full effect immediately upon signature by the Governor revised KRS 350.060(3). This revised subsection:

a) automatically extends, to a date eight months after the date of approval of our permanent program, the life of those valid interim program permits which were in effect on March 21, 1980 and would expire between May 1, 1980 and the end of the eight months; and

b) establishes a cutoff date of August 1, 1980 for the filing of new permit applications under the interim program. If our permanent program is disapproved on September 3, 1980 the cutoff will automatically expire and a new cutoff date of December 1, 1980 will take effect.

The full text of the revised subsection is set forth below:

(3) Any permit validly issued by the department under the interim regulatory program in effect on the effective date of this subsection and which would expire at any time after May 1, 1980 and before eight (8) months after approval of the permanent regulatory program by the United States Secretary of the Interior, shall be extended and remain in effect until eight (8) months after approval of the permanent regulatory program. Any interim permit so extended shall continue as a valid existing permit for purposes of this subsection if the permittee so requests and files an application for a permit with the department within two (2) months of the date of approval of the permanent regulatory program. The permittee may conduct operations under that existing permit beyond the eight (8) month period if an application has been filed in accordance with this subsection, but the initial administrative decision has not been rendered. The department shall not accept interim permit applications after August 1, 1980 or after December 1, 1980 if the United States Secretary of the Interior has not approved the Commonwealth's permanent regulatory program by September 3, 1980. The department shall receive and act on all substantially complete permit applications tendered to it on or before August 1, 1980 or December 1, 1980, whichever date is applicable, under the interim program.

March 25, 1980

Let me help clarify the importance of this new subsection. P.L. 95-87 prohibits issuance of any new "interim" program permits after the Secretary of the Interior approves our "permanent" program. This approval is expected to come September 3, 1980, or perhaps later on January 3, 1981 if our program is initially disapproved on September 3, 1980. P.L. 95-87 further prohibits any surface coal mining operations after eight months from the date of approval of the permanent program unless those operations are covered by new permits which include all the requirements of the permanent program. However, the federal Act does provide one exception to this rule. A permittee in operation under a valid interim permit on the date the Secretary of the Interior approves our permanent program may continue to operate on that interim permit after the eight months only if: (1) the permittee applies for a new permanent program permit for that area within two months after the date of program approval, and (2) the department has not acted to issue or deny the new application by the end of the eight months after program approval. All other interim permits will automatically expire at the end of the eight months.

Interim permittees who plan to continue operations after the eight months on areas now covered by interim permits which would have expired after May 1, 1980 and before the end of the eight months, have until now been facing the doubly burdensome task of securing renewals of their interim permits and also preparing complete new permanent program applications for those same areas within two months after approval of Kentucky's permanent program. The automatic extension provided by revised KRS 350.060(3) eliminates the need for such renewals and allows operators and their engineers to concentrate their efforts toward preparation of complete new permanent program permit applications for those areas. Interim permittees who will complete their mining operations on those permits before the end of the eight months are not required to submit permanent program applications for those areas, but it must be clearly understood that mining on those areas must cease prior to the end of the eight months.

I hope the significance of this legislation is clear. If not, please do not hesitate to contact me.