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

RECLAMATION ADVISORY MEMORANDUM NO. 81-04 #27

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

FROM: Elmore C. Grim, Commissioner *E.C.G.*  
Bureau of Surface Mining Reclamation and Enforcement

DATE: April 29, 1981

SUBJECT: Reclamation Deferments

This Memorandum is issued to define Bureau policy concerning reclamation deferments for areas disturbed by surface mining.

KRS 350.100(1) requires that an operator commence reclamation of the area of land affected by his operation "as soon as possible after the beginning of strip mining of that area in accordance with plans previously approved by the division, and to complete such reclamation within twelve (12) months after the permit has expired. . .". In addition, the Department was directed by KRS 350.093 to promulgate regulations establishing time limits requiring backfilling, grading and planting to be kept current. The Department complied with this directive by promulgating 405 KAR 1:260, which establishes time limits for contemporaneous reclamation.

405 KAR 1:260 provides general requirements, but allows for approval of alternate standards as part of the permittee's approved backfilling and grading plan under Section 2. In addition to Section 2, 405 KAR 1:260 contains two other sections, Sections 4 and 5, allowing for divergence from the general rules. This memorandum will describe what situations Sections 4 and 5 were intended to address and how they will be implemented to allow deferments of reclamation.

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405 KAR 1:260 Section 4: Time Extensions Due to Adverse Conditions

Section 4 provides:

Section 4. Time extensions due to adverse conditions. In individual cases the department may grant additional time for coal removal, backfilling and grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching, when adverse weather conditions or other conditions beyond the operator's control make it impossible to conduct such operations in a timely manner, and such conditions are appropriately documented and are successfully demonstrated to the department. However, no claim for lost time in such operations will be accepted if the operations could reasonably have been conducted at the time in question.

This section provides a mechanism by which the Division of Operations and Enforcement of the Bureau, through the Regional Offices of the Bureau, may grant extensions of the time and distance criteria for reclamation. Such "field" extensions may be granted only when the permittee successfully demonstrates, by appropriate documentation or otherwise, that there exist "adverse conditions . . . beyond the operator's control [which] make it impossible to conduct such operations in a timely manner." Proper justification requires a demonstration of physical impossibility of reclamation. Sample reasons for such a deferment are bad weather conditions or labor strike.

Requests for Section 4 extensions must be made in writing to the regional administrator, along with a showing of adverse conditions. Upon a successful demonstration that such conditions exist, the regional administrator may grant a reclamation extension for a maximum of thirty (30) days, on a form provided by the Department (attachment 1).

At least seven (7) days prior to the expiration of the Section 4 extension, the permittee may request, in writing, an additional extension, again stating the reason for the request and providing any appropriate additional documentation. The regional administrator may renew the original extension once upon such request, such renewal not to exceed thirty (30) days. Section 4 extensions may thus be given by the Regional Offices for a maximum total period of sixty (60) days. Any need for additional time must be demonstrated to the Division of Operations and Enforcement in Frankfort by written request. Such request must initially be submitted to the Regional Office at least two (2) weeks prior to the expiration of the renewed deferment. Upon recommendation of the Regional Administrator, the Director of the Division of Operations and Enforcement shall issue his decision on or before expiration of the field deferment.

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It should be emphasized that Section 4 concerns extensions for adverse weather or other conditions beyond the permittee's control. It may not be used to defer reclamation because of problems of marketing coal mined from the permit.

405 KAR 1:260 Section 5: Exceptions and Variances for Site-Specific Conditions

Section 5 authorizes variances for site specific conditions through formal approval by the Division of Permits in several circumstances. The section states:

Section 5. Exceptions and variances. The department may authorize in writing such exceptions and variances to the requirements of this regulation as the department may deem necessary to reasonably and properly address site-specific conditions.

Section 2 of 405 KAR 1:260 provides for alternate time and distance criteria where the permittee obtains approval of such criteria in his approved backfilling and grading plan. Section 5 may be used to achieve the same result by revision of the permit where the original application did not request such a variance. The criteria of 405 KAR 1:260 Section 2 must be met in such a circumstance.

In addition to the broad variance described in the foregoing paragraph, reclamation deferments for specific areas may be granted by the Division of Permits for the time period demonstrated to be necessary by the permittee by appropriate documentation. Such deferments are available as set forth below:

(1) Deferments for Other Mining Operations

Reclamation deferments may be approved for specifically defined strip mine areas for the time during which other bona fide mining operations are carried out on such strip mined areas, pursuant to KRS 350.080. The surface mine operator must apply in writing for such a deferment from the Division of Permits, and must meet the criteria of KRS 350.080 and 405 KAR 1:050 Section 10, in addition to criteria (a)-(i) below.

(2) Coal Marketing Problems

Reclamation deferments may be approved by the Department pursuant to Section 5 for site-specific coal marketing problems, subject to several limitations. Such deferments may be given for a single maximum period of six months, not to extend beyond the expiration date of the permit. In addition to criteria (a)-(i) below, the permittee desiring a deferment due to difficulties in marketing his coal must demonstrate in his cover letter why

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the deferment will enable him in the meantime to sell the coal. That is, the permittee must indicate that the 6-month deferment is not sought merely to delay, but that during the 6-month period the permittee will be taking affirmative steps to arrange to market the coal.

In order to obtain the reclamation deferments described in (1) and (2) above, the permittee must submit an original and two copies of the request for deferment to the Division of Permits. Such request shall contain at a minimum:

- (a) A cover letter which explains the reason for the deferment and contains appropriate documentation to justify the request. It should also identify the permit number and the length of time for which the deferment is requested.
- (b) A statement of the exact number of acres which have been affected in the permit area prior to such deferment.
- (c) A statement accompanied by an enlarged U.S.G.S. map showing the extent and kind of reclamation accomplished on these areas. The map should also show the area affected by the deferment.
- (d) Identification of the backfilling, grading, revegetation, environmental monitoring, and water treatment activities that will continue during the deferment. Water monitoring must continue during deferment as well as any water treatment necessary to meet the water quality standards.
- (e) Cross sections of all areas that are being included in the deferment, such as pits, spoil areas, etc.
- (f) If water is to be allowed to accumulate in the pit, the method of pumping the pit is to be described. This procedure should include preliminary testing and a plan for treatment prior to pumping.
- (g) The bond is to be re-evaluated on the area by the regional office personnel. The application should be accompanied by the additional bond amount, which will be released when reclamation is brought to current status.
- (h) A plan to provide temporary vegetation on the ungraded disturbed area.
- (i) The applicant must demonstrate that all applicable water management practices shall be maintained in accordance with KRS 350.

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Approval of the deferment will be in writing by the Director of the Division of Permits and will set forth an expiration date. Such approval will be granted if the Director finds the deferment is justified and that no environmental damage will occur during the period of deferment.

\* \* \*

KRS 350 requires that all disturbances be contemporaneously reclaimed. A site must either be kept current as defined in 405 KAR 1:260 (or, in the alternative, as set forth in a superceding backfilling and grading plan approved by the Department) or it must be the subject of a deferment pursuant to Sections 4 or 5. Violation of the conditions of 405 KAR 1:260 or of a deferment shall be grounds for the issuance of a notice of noncompliance.

Applications for reclamation deferments pending before the Department shall be processed in accordance with this Reclamation Advisory Memorandum. That is, applications for deferments due to physical impossibility of reclamation (Section 4) will be routed to the regional offices for consideration. Concerning applications for Section 5 deferments, the Division of Permits may, as it deems necessary, require supplementary information pursuant to the criteria set forth above before making its determination. As the Bureau becomes aware of sites in violation of these guidelines where the operator was under a reasonable belief that reclamation could be deferred under past Departmental policy, the operator will be given written notice of a reclamation timetable which will give him a reasonable period of time within which to begin and complete the reclamation to bring it to a current status.

Commonwealth of Kentucky  
Department for Natural Resources and Environmental Protection  
Frankfort, Kentucky 40601

DEFERMENT OF RECLAMATION DUE TO ADVERSE  
CONDITONS BEYOND THE OPERATOR'S CONTROL

Company Name \_\_\_\_\_ Permit No. \_\_\_\_\_

Company Address \_\_\_\_\_ Acres Permitted \_\_\_\_\_

\_\_\_\_\_ Acres Disturbed \_\_\_\_\_

Initial Request \_\_\_\_\_ Renewal \_\_\_\_\_

On \_\_\_\_\_, 19\_\_\_\_, the above-named company requested a  
reclamation deferment for the following reason(s): \_\_\_\_\_

Company Signature \_\_\_\_\_

The company having provided satisfactory evidence that adverse conditions beyond its control make reclamation impossible to complete within the time limits established by Department regulations; and that no environmental harm will occur during the period of deferment; the Department hereby approves the request, pursuant to 405 KAR 1:260 Section 4, as described below:

1. Type of Reclamation Deferred: \_\_\_\_\_

2. Location of Area Upon Which Reclamation May Be Deferred: \_\_\_\_\_

3. Special Measures for Protection of Environment (if applicable): \_\_\_\_\_

4. Expiration Date of Deferment: \_\_\_\_\_ (reclamation may  
be deferred for a maximum of thirty (30) days for each request)

Inspector \_\_\_\_\_ Date: \_\_\_\_\_

Regional Administrator \_\_\_\_\_ Date: \_\_\_\_\_