

Eugene F. Mooney
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

MEMORANDUM

TO: Coal Operators and Company Engineers
Consulting Engineers
All Bureau of Surface Mining Reclamation Personnel
All Other Persons Concerned with Coal Mining and
Reclamation in Kentucky

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

DATE: April 11, 1978

SUBJECT: Implementation of New Kentucky Reclamation Legislation

New Kentucky Reclamation Law and Regulations

The 1978 Kentucky General Assembly has enacted legislation which makes Kentucky's reclamation laws (KRS Chapter 350) consistent with the initial regulatory program of Section 502 of Public Law 95-87, the "Surface Mining Control and Reclamation Act of 1977." The new legislation has been signed by the Governor and will become effective on May 3, 1978. The new legislation requires the department to regulate both strip mining for coal and the surface effects of underground coal mining, including coal processing and preparation facilities. The department will adopt emergency regulations effective May 3, 1978 which will implement the new Kentucky legislation in a manner consistent with the federal regulations adopted pursuant to P.L. 95-87.

Permits Issued after May 3, 1978

On and after May 3, 1978, new permits and renewals to conduct strip mining for coal and surface operations of underground coal mining will be issued only when it has been demonstrated to the department that the proposed mining operations will comply with all applicable requirements of the new Kentucky law and regulations.

New Permit Application Forms and Instruction Manual

The department has developed new permit application forms which reflect the requirements of the new law and regulations, and a brief manual of instructions explaining how to properly complete the application form. These new application forms and the instruction manual will be available by April 17, 1978 in the Division of Permits in Frankfort, and in the Area Offices of the Division of Operations and Enforcement.

When to Use the New Application Forms

Because of the time required to review and process permit applications, and in order for the Division of Permits to process pending applications and prepare to administer the requirements of the new law, it is essential that at 4:30 p.m. on April 17, 1978, the Area Offices cease to receive applications submitted under current standards. Beginning on April 18, 1978, the Area Offices will accept and process only applications which are submitted on the new application forms and which propose to comply fully with the requirements of the new law.

Regulation of Surface Operations of Underground Coal Mining

New Mines.

All new underground coal mining operations in which surface operations begin on or after May 3, 1978, must obtain permits from the department in accordance with the new Kentucky law and in accordance with regulations to become effective May 3, 1978. The application requirements will be the same as those set forth above. The environmental protection performance standards in the new Kentucky regulations will be consistent with the standards of the federal regulations adopted pursuant to P.L. 95-87, which have been in effect for new operations since February 3, 1978.

Mines Existing on May 3, 1978.

Because the Kentucky law and regulations covering surface effects of underground coal mining will take effect May 3, 1978, the department recognizes that underground mines existing on May 3, 1978 cannot immediately comply fully with the permitting requirements of the new law and regulations. Therefore, the department will allow such existing underground mines until not later than August 3, 1978 to have completed all application requirements pursuant to the new law and regulations. Operations which have not so applied by August 3, 1978 will be in violation and will be subject to appropriate enforcement actions.

Upgrading of Facilities and Structures Existing Prior to May 3, 1978 Strip Mining and Surface Operations of Underground Mining

All surface structures and facilities which serve active mining areas after May 3, 1978 are required by federal law and regulations pursuant to P.L. 95-87 to be brought into compliance with the federal regulations by May 3, 1978. Additionally, the new Kentucky legislation requires that all strip mining operations comply with the provisions of the new Kentucky legislation on May 3, 1978.

All such structures and facilities, both for strip mines and underground mines, must be brought into compliance with federal and state laws and regulations by May 3, 1978, if possible. If it is impossible to accomplish such upgrading by May 3, 1978, the operator must by May 3, 1978 submit to the department and to the Director, Office of Surface Mining, U.S. Department of Interior, Washington D.C. 20240, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 3, 1978. The statement should contain a work schedule for bringing the structure or facility into compliance and should include the estimated completion date.

Design plans for reconstruction should be prepared by a professional engineer registered in Kentucky. Two copies of the plans should be submitted to the department not later than June 3, 1978, and must be accompanied by a statement from the responsible design engineer that in his best professional judgment the redesigned structure or facility will comply with the applicable performance standards. Actual reconstruction should start not later than May 3, 1978, or in the case of sedimentation ponds, by not later than June 3, 1978. The design engineer must be responsible for engineering inspection during construction, and upon completion of construction should submit two copies of "as-built" plans to the department, accompanied by his certification that the reconstruction was conducted in accordance with his design and that the reconstructed facility or structure is in compliance with applicable performance standards. Reconstruction must be completed by November 4, 1978. Structures or facilities which will be removed by November 4, 1978 need not be upgraded. The department should be notified by June 3, 1978 of any structures which are to be removed by November 4, 1978.

Plans for proposed reconstruction of sedimentation ponds must bear the structure hazard classification determined by the responsible design engineer according to 401 KAR 4:030. Plans which do not bear such structure hazard classifications will not be accepted. For structures which are classified (B) - Moderate Hazard or (C) - High Hazard, the department must require that the design and reconstruction comply with the requirements of KRS 151.250 and 401 KAR 4:030 (Division of Water Resources) and that a permit be issued thereunder prior to reconstruction.

Please note that no separate permit will be issued by the Bureau of Surface Mining Reclamation and Enforcement as a result of the submitted plans or reconstruction. However, after June 3, 1978, appropriate enforcement actions will be taken for failure to begin required reconstruction. Also, appropriate enforcement actions will be taken for failure to complete required reconstruction by November 4, 1978.

General Enforcement Policy Beginning May 3, 1978

On and after May 3, 1978, all strip mining operations and surface operations of underground mining must comply with the environmental protection performance standards of the new law and regulations, such as the requirements for return to approximate original contour, the requirements for meeting water quality standards, and the prohibition against placing spoil materials on downslopes. Except for structures and facilities being upgraded under approved plans, all operations which do not meet applicable performance standards will be in violation and will be subject to appropriate enforcement actions.

Eugene F. Mooney
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April 25, 1978

This letter transmits for your information, copies of the proposed new surface coal mining regulations in draft form which the Department intends to put into effect May 3, 1978. The proposed regulations are designed under the new 1978 State Legislation to comply with the interim program requirements of the new federal stripmining law and regulations.

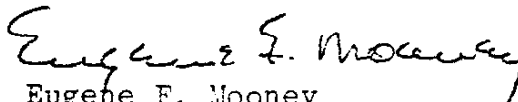
These copies are being sent to you for informal review and comment on them to the Department prior to our promulgation of them. Because of the foreshortened time frame, it is essential that any comment be transmitted to the Department no later than May 1, 1978. We have arranged for Jim Villines, Bureau of Surface Mining Reclamation and Enforcement, Division of Standards and Specifications (502 564-2340) to receive comment personally, in writing or by telephone.

While not required by law, this informal review and comment period is an intrinsic part of our overall plan to promulgate the necessary regulations in timely manner. The Department expects to make any final revisions found necessary or desirable as a result of informal comments and on or before May 3, 1978, request Governor Carroll to promulgate them as emergency regulations which will make them effective for 120 days. Simultaneously, they will be filed on May 3, 1978, with the Legislative Research Commission for normal 30-day period for publication, comment, public hearing and review by the

Administrative Regulations Review Committee. By this procedure the Department intends to have complying regulations temporarily in force when the new federal requirements become effective on May 3, 1978, and, at the same time, give ample opportunity for public comment and review before the regulations become permanent.

Your participation and cooperation in this important matter will be appreciated.

Respectfully,


Eugene F. Mooney
Secretary