



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. 33

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

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

DATE: April 27, 1982

SUBJECT: Coal Processing Operations and Crushing and Loading Facilities

APPLICABILITY AND EFFECT

This Memorandum applies to both the interim and permanent regulatory programs, and supersedes Reclamation Advisory Memorandum 81-03 (March 30, 1981) and Amendment to Reclamation Advisory Memorandum 81-03 (August 11, 1981). This Memorandum redefines coal processing operations and loading facilities, and establishes criteria for determining which loading facilities will be required to have permits under KRS Chapter 350. This Memorandum describes procedures for cancellation of existing permits for certain loading facilities which are no longer required to have permits.

PURPOSE

Federal and state laws concerning coal processing operations and crushing and loading facilities have been challenged in court, sometimes resulting in conflicting court decisions. As a result of the legal confusion and changing administrations, federal and state policies regarding permitting and enforcement have changed several times. The 1982 Kentucky General Assembly recently cleared up much of the confusion by changing KRS Chapter 350 so that facilities for loading or treating coal without separating waste from the coal will not be regulated under KRS Chapter 350 unless the facilities are located at or near the minesite. This Memorandum is intended to provide specific criteria for determining which facilities must have permits in the remainder of the interim program and in the permanent program. However, this matter may not yet be completely settled, since future court decisions or changes to federal regulations could cause further revisions of this policy.

COAL PROCESSING OPERATIONS

"Coal processing operation" means a collection of facilities, including all associated support facilities and operations, where run-of-the-mine coal (including coal extracted from waste piles) is subjected to chemical or physical processing and separated from its impurities (waste is generated). An operation which only hand-picks coal and does not maintain a waste dumping area will not be considered a coal processing operation, but it may be regulated as a loading facility as described below.

All coal processing operations, regardless of where they are located, are subject to regulation under KRS Chapter 350. At this time, however, the department will not regulate coal processing operations under KRS Chapter 350 when they are located at the point of ultimate use of the coal (such as at a coal-fired power plant).

LOADING FACILITIES

"Loading facility" means a collection of facilities, including all associated support facilities and operations, at which run-of-the-mine coal or processed coal is placed into trucks, railroad cars, barges, etc., for the purpose of transportation; and may include facilities for the physical processing of coal such as crushing, screening, sizing, or blending, which does not separate the coal from its impurities.

A loading facility must obtain a permit under KRS Chapter 350 only if it is located at or near a coal mining operation or coal processing operation with which it is associated.

(1) "At or near" means such close physical proximity that the loading facility is clearly an integral part of the coal mining operation or coal processing operation with which it is associated. Typically, a loading facility which is "at or near" will be located within, contiguous to, or adjacent to the boundaries of the coal mining operation or coal processing operation with which it is associated. In determining if a loading facility is located "at or near" a strip mining operation or coal processing operation, the department will consider the boundaries of the permit area. For underground mines, the boundaries of the surface disturbed area, rather than the permit area, will be used. A loading facility can be "at or near" an operation even if a public road or other public or private property separates it from the operation. As a practical matter, however, the department will not consider a coal loading facility to be "at or near" a coal mining operation or coal processing operation if it is located more than one-half (1/2) mile from the nearest boundary of the operation, measured by the straight line horizontal distance on a map.

(2) A loading facility is "associated with" a coal mining operation or coal processing operation if it receives coal from such operation and the loading facility and the operation are owned or controlled, directly or indirectly, by or on behalf of:

- (a) The same person;
- (b) Two or more persons one of which controls, is under common control with, or is controlled by the other; or
- (c) Members of the same family and their relatives, unless the person owning the loading facility establishes that there is no direct or indirect business relationship between them.

For purposes of this policy, "control" means: ownership of 50 percent or more of the voting shares of a corporation or general partnership in a business entity; any relationship which gives one person the ability in fact or law to direct what the other does, in total or in part; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

Using the half-mile test, any loading facility located more than one-half mile from the nearest coal mining operation or coal processing operation will not be regulated under KRS Chapter 350. A loading facility within one-half mile of any coal mining operation or coal processing operation must, in order to be found exempt from KRS Chapter 350, submit an affidavit to the department upon a form provided by the department. This affidavit will be used by the department to establish whether the loading facility is "associated with" a coal mining operation or coal processing operation which it is "at or near." A new affidavit must be submitted to the department if the information in the original affidavit becomes outdated, or when requested by the department.

LOADING FACILITIES CURRENTLY UNDER PERMIT

Many loading facilities have already obtained permits under prior policies. Some of these permits will no longer be necessary under this new policy. The department will begin a search of its files for unnecessary permits and take action to cancel them, but the process will likely be time consuming because of our heavy permit workload.

RECLAMATION ADVISORY MEMO NO. 33

April 27, 1982

Page 4

In order to have the permit cancelled and the bond released as quickly as possible, a permittee should submit to the Regional Office a request for bond release and a written statement explaining why he is no longer required to have a permit. If the permitted loading facility is located within one-half mile of a coal mining operation or coal processing operation, the permittee should submit to the Regional Office the affidavit mentioned before, along with his request for cancellation of the permit and bond release.

If you have any questions regarding this new policy, please call the Division of Permits at (502) 564-2320.

AFFIDAVIT/APPLICATION FOR EXEMPTION OF LOADING FACILITY

1. NAME OF LOADING FACILITY _____
2. CURRENT BSMRE PERMIT (IF ANY) OF LOADING FACILITY _____
3. PERMANENT ADDRESS _____
4. TELEPHONE NUMBER () _____
5. LEGAL STRUCTURE OF LOADING FACILITY FOR WHICH EXEMPTION IS REQUESTED (check one):
 SINGLE PROPRIETORSHIP (INDIVIDUAL) PARTNERSHIP CORPORATION OTHER
6. IF A SINGLE PROPRIETORSHIP OR PARTNERSHIP, LIST OWNERS. IF OTHER STRUCTURE, LIST ALL OFFICERS, DIRECTORS, PERSONS PERFORMING FUNCTION SIMILAR TO A DIRECTOR, AND STOCKHOLDERS OWNING TEN (10) PERCENT OR MORE OF STOCK. USE ADDITIONAL PAGE(S), IF NECESSARY.

NAME _____ SOCIAL SECURITY NO. _____ - _____ - _____

ADDRESS _____

NAME _____ SOCIAL SECURITY NO. _____ - _____ - _____

ADDRESS _____

NAME _____ SOCIAL SECURITY NO. _____ - _____ - _____

ADDRESS _____

NAME _____ SOCIAL SECURITY NO. _____ - _____ - _____

ADDRESS _____

NAME _____ SOCIAL SECURITY NO. _____ - _____ - _____

ADDRESS _____

7. LIST ALL COAL MINING OPERATIONS AND COAL PROCESSING OPERATIONS LOCATED WITHIN ONE-HALF (1/2) MILE OF THE LOADING FACILITY. INDICATE IF THE LOADING FACILITY RECEIVES COAL FROM THE PARTICULAR OPERATION.

DOES LOADING FACILITY
RECEIVE COAL FROM THIS
OPERATION?

NAME OF OPERATION LOCATED WITHIN 1/2 MILE	PERMIT NO.	YES	NO
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

AFFIDAVIT

I, _____, BEING FIRST DULY SWORN, STATE TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE STATEMENTS AND REPRESENTATIONS MADE IN THIS APPLICATION FOR EXEMPTION ARE TRUE AND CORRECT. IF THE INFORMATION SET FORTH ABOVE BECOMES OUTDATED DUE TO CHANGING CONDITIONS, I WILL SUBMIT AN UPDATED APPLICATION AND AFFIDAVIT TO THE DEPARTMENT WITHIN THIRTY (30) DAYS AFTER THE CHANGE.

(APPLICABLE ONLY TO CORPORATIONS) ON _____, 19____ THE BOARD OF DIRECTORS OF _____ ADOPTED A RESOLUTION GRANTING SIGNATURE AUTHORITY TO THE BELOW NAMED APPLICANT, WHICH WOULD EXTEND TO EXECUTING ALL DOCUMENTS REQUIRED UNDER THIS APPLICATION.

APPLICANT'S NAME _____ TITLE _____

APPLICANT'S SIGNATURE _____ DATE _____

SUBSCRIBED AND SWORN TO BEFORE ME BY _____ THIS THE _____

DAY OF _____, 19____.

NOTARY PUBLIC _____ MY COMMISSION EXPIRES _____