



COMMONWEALTH OF KENTUCKY
DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
BUREAU OF SURFACE MINING RECLAMATION AND ENFORCEMENT

ELMORE C. GRIM
COMMISSIONER
FRANKFORT, KENTUCKY 40601

RECLAMATION ADVISORY MEMORANDUM NO. 36

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: June 8, 1982

SUBJECT: New requirements for two-acre operations.

On June 2, 1982, BSMRE personnel met in Lexington with about 270 operators and engineers to discuss the transition application. At the meeting, the question was raised as to whether areas overlying underground workings must be counted in determining whether an underground mine affects more or less than two acres. Now that we are under the permanent program such areas must be counted, as we explained at the meeting. This memorandum is intended to fully explain this issue, and also to discuss other recent changes to the requirements for two-acre operations.

Interim Program

Under the interim program, only surface disturbances were counted in determining the affected area of underground mines. These surface disturbances included surface excavations, disposal areas, access and haul roads, and other surface disturbances. These criteria for calculation of the affected area apply to all complete interim applications received by the bureau through June 1, 1982.

Permanent Program

The permanent program changes the method for determining whether an underground mine affects more or less than two acres. The federal permanent program regulations at 30 CFR 701.5 require that, in addition to surface disturbances, areas overlying underground workings must be counted in the affected area to determine whether an operation must be regulated under SMCRA (the 1977 federal Surface Mining Act, P.L. 95-87). If an operation affects more than two acres under the federal definition it must be regulated under

SMCRA, and Kentucky must regulate that operation under the full permanent program requirements of 405 KAR Chapters 7-24. If the operation affects two acres or less under the federal definition it is exempt from SMCRA, and Kentucky can regulate it under the lesser requirements of 405 KAR 3:040 as modified by new regulation 405 KAR 26:001E (see attached copy).

Areas overlying abandoned underground workings should not be counted in the affected area. Existing underground workings should be counted only if they will be in active use at some time after January 18, 1983. All new underground workings which will be opened after May 18, 1982 should be counted. These criteria apply to all permit applications received by the bureau after June 1, 1982.

Transition from Interim to Permanent Program

Some underground mining operations which have two-acres-or-less permits under the interim program, will be larger than two acres when the areas overlying underground workings are counted. If such an operation intends to continue mining after January 18, 1983 (8 months after primacy), then that operation must submit a transition application indicating the boundaries of areas overlying underground workings by July 19, 1982 (2 months after primacy) and a comprehensive permanent program permit application by January 18, 1983. Failure to meet these filing deadlines can lead to cessation of mining on January 18, 1983.

New Regulation 405 KAR 26:001E for Operations of Two Acres or Less

The 1980 and 1982 General Assemblies changed some requirements of KRS Chapter 350 for operations of two acres or less. Most of these new provisions in KRS Chapter 350 became law at the same time Kentucky received primacy, on May 18, 1982. Emergency regulation 405 KAR 26:001E was filed on May 24, 1982 to put the new requirements into effect.

405 KAR 26:001E keeps the existing requirements of 405 KAR 1:040 and 3:040 in effect for two-acre operations, with certain changes. Briefly, these changes are:

- (1) Highwall elimination is no longer required.
- (2) The maximum bond is reduced to \$2,000 (\$1,000 per acre or fraction thereof), and the bond may be filed after the bureau is ready to issue the permit.
- (3) The period for processing permits is reduced from thirty working days to thirty calendar days.

(4) Permit application maps must show the areas overlying underground workings, but bonds and acreage fees are not required for these areas.

(5) The bureau will not issue a cessation order solely because the permittee has failed to abate a violation. However, the \$750 per day mandatory penalty of KRS 350.990(1) would apply where a violation noted on a notice of noncompliance was not timely abated.

(6) On and after July 15, 1982, the basic permit fee will increase from \$250 to \$375, and the acreage fee will increase from \$50 to \$75 per acre.

If you have any questions, please do not hesitate to contact our Regional Offices or the Division of Permits in Frankfort at (502) 564-2320.

Attachment

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

405 KAR 26:001E. Operations of two (2) acres or less.

RELATES TO: KRS Chapter 350, 350.010, 350.020, 350.028, 350.050,
350.055, 350.057, 350.060, 350.062, 350.064, 350.070, 350.085, 350.090,
350.093, 350.095, 350.100, 350.110, 350.113, 350.130, 350.135, 350.151,
350.445, 350.450, 350.465, 350.990

PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.060, 350.064,
350.093, 350.130, 350.135, 350.151, 350.450, 350.465

EFFECTIVE: May 24, 1982

NECESSITY AND FUNCTION: The 1980 and 1982 General Assembly enacted amendments to KRS Chapter 350 which would change certain regulatory requirements for surface coal mining and reclamation operations of two (2) acres or less. Several of those changes become applicable upon the effective date of the approval by the U.S. Secretary of the Interior of Kentucky's permanent regulatory program under the 1977 Surface Mining Control and Reclamation Act. The effective date of that approval is May 18, 1982, and this regulation is necessary to implement the required changes in a timely manner. This regulation continues the existing regulatory program for such operations, but deletes requirements for highwall elimination; decreases the maximum amount of performance bond required; specifies when performance bond may be filed; reduces the time for processing applications; specifies boundaries which must be identified for underground mines; establishes conditions under which cessation orders may not be issued; and increases permit fees and acreage fees.

Section 1. Applicability. This regulation shall apply to surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of Title 405, Chapters 7 through 24.

Section 2. Notwithstanding the provisions of 405 KAR 1:005E and 405 KAR 3:005E, the provisions of Title 405, Chapters 1 and 3 shall remain in effect for surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of Title 405, Chapter 7 through 24, except as provided in this section.

(1) Highwall elimination. Elimination of highwalls left by such operations shall not be required.

(2) Performance bonds. The required bond amount for such operations shall not be more than \$1,000 per acre or fraction thereof. The applicant shall not be required to submit the required performance bond until after the applicant has received written notice of the department's decision to issue the permit.

(3) Processing of applications. Complete applications for permits shall be processed within thirty (30) calendar days, except that periods of temporary withdrawal shall not be counted against the thirty (30) calendar days.

(4) Underground mines. Applications for permits for the surface effects of underground mining shall clearly identify the boundaries of surface areas above the proposed underground mining operations.

(5) Cessation orders. The department shall not issue orders requiring the cessation of operations solely for failure to abate a violation.

(6) Fees. On and after July 15, 1982, the basic fee for applications for permits shall be \$375, and the acreage fee shall be seventy-five dollars (\$75) for each acre or fraction thereof.