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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION  
BUREAU OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
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RECLAMATION ADVISORY MEMORANDUM No. 39

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 21, 1982

SUBJECT: Answers to Recurring Questions

Now that we are under the permanent program, operators and engineers are asking many questions about the new requirements. We cannot answer all the questions by the mechanism of Reclamation Advisory Memorandums, but from time to time we will try to provide answers to recurring questions on issues affecting significant segments of the industry.

New Terminology

There are several new terms in the permanent program used to distinguish among different types of operations. These terms have precise definitions in the law and regulations, but for the purpose of general use, the following brief definitions may be helpful.

Surface coal mining operation is strip mining, underground mining, and coal processing operations.

Surface coal mining and reclamation operation is the above plus the associated reclamation operations.

Surface mining activities is strip mining.

Underground mining activities is underground mining which has two types of operations:

- (1) surface operations is that portion of underground mining that occurs on the surface.
- (2) underground operations is that portion of underground mining that occurs underground.

surface operations area is areas on which surface operations occur.

underground operations area is areas overlying underground operations.

#### Permit Area for Underground Mines

Permit area is defined at 405 KAR 7:020E, Section 1(79) as follows:

"Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit. (Emphasis added.)

Affected area is defined at 405 KAR 7:020E, Section 1(4) as follows:

"Affected area" means any land or water upon which surface coal mining and reclamation operations are conducted or located, and land or water which is located above underground workings. (Emphasis added.)

"Underground workings" ("underground operations") include all underground operations such as underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage, and blasting. (See paragraph (b) of the definition of underground mining activities at 405 KAR 7:020E, Section 1(127).)

Therefore, all transition applications and comprehensive permit applications must include within the permit boundary all surface operations areas and all underground operations areas which will be created or utilized during the term of the permit. Abandoned underground workings which are sealed off and will not be entered again during the term of the permit need not be included in the permit area. All other underground workings must be included in the permit area.

For underground mining activities, performance bonds and acreage fees are required for surface operations areas but not for underground operations areas.

#### Cumulative and Incremental Bonding

The regulations submitted to OSM for approval in December 1981 provided for three bonding methods: single area bonding, cumulative bonding, and incremental bonding. Cumulative bonding has since been deleted from the permanent program. Cumulative bonding would have been the same as what was called incremental bonding under the interim program. What we now call "incremental bonding" in the permanent program is a totally new method of bonding.

The new incremental bonding method is a "pure" incremental bonding system in that each increment stands alone for the purpose of bond amount calculation, bond release, and bond forfeiture. Under the new incremental bonding method the applicant first files a bond covering the first increment to be mined. When he is nearly ready to move into the next increment, he files the bond for that increment. This procedure is repeated throughout the permit area. Meanwhile, when a reclamation phase has been completed on an increment, the permittee may request a partial bond release for that increment and use these funds when filing bond for a subsequent increment. Such releases are subject to public notice and comment, and hearings may be requested by persons with an interest that may be adversely affected by the bond release. When an increment is fully reclaimed and qualifies for final bond release, that increment is deleted from the permit area. In other words, for the purposes of bonding, each increment is treated much as though it were a permit area.

Under the proposed cumulative bonding method, the individual sections of the permit area would not have been independent. The bond filed for one section could have been forfeited for failure to reclaim some other section and no section could have been fully released until the entire permit area was reclaimed. The advantage to the permittee was that credit for successful reclamation on one section of the permit area could have been applied toward the amount of bond to be filed for the next section to be mined without opportunity for public participation in the process. OSM disapproved this bond crediting procedure. One of the conditions of OSM's approval of Kentucky's program was that bond crediting could not be utilized unless the regulations were amended to provide adequate public participation in the process, similar to that required for releases under the other bonding methods.

However, if full public participation procedures were added to the cumulative bonding method, then the method would essentially be the same as the new "incremental" bonding method and would be redundant. The cumulative bonding method was deleted from the permanent program regulations since there would be no benefits provided to the operator by this system beyond those provided by the new incremental bonding method. Thus, under the permanent program we have two bonding methods: the old "single area" method which has been around for years, and the new incremental method.

#### Transfer of Interim Permits

Under the interim program, a successor operator used to be able to take over an existing permittee's operations without any prior approval of the department; he had only to apply for his own permit within thirty days after succeeding to the interest and he could keep working in the meantime. This procedure will soon end. It now applies only for those applications for succession to interim program permits which were received by the department on or before June 1, 1982.

For any application filed on or before June 1, 1982, for succession to an interim program permit, the permit must be issued by July 19, 1982, or it cannot be issued at all under the interim program succession procedure. Therefore, if a successor applicant fails to correct all application deficiencies in time for the department to issue the new permit by July 19, 1982, he must cease operations until he has obtained approval for a transfer pursuant to the permanent program procedure.

Under the permanent program, permits are a property right which can be sold by a permittee to another person. Permits may be transferred from one a permittee to another person only with the prior approval of the department (405 KAR 8:010E Section 22). Prior to finalizing the succession agreement with the original permittee, the successor should submit to the department a simple application for transfer. Once approval is granted, the original permittee and the successor may complete their business transaction. Then the successor may continue to operate according to the terms of the original permit. If he wants to enlarge the permit area or revise his mining and reclamation plan, he must apply for a new permit or a permit revision.

As of June 1, 1982, all successors to interim or permanent program permits must follow the above procedure. Detailed information on transfer of interim permits is now available at the Regional Offices in the form of a memorandum dated May 18, 1982. Remember, a successor who begins surface coal mining operations on the permit area before receiving written approval of the department may be cited for mining without a permit.

Note: Reclamation Advisory Memorandum No. 31 (April 15, 1982) applies only to applications for successions filed prior to June 1, 1982.

On-site Marking of Sample Locations for Pre-Mining Data Collection

At the June 2 meeting concerning the transition process, the department stated that physical marking of sample locations for pre-mining data collection would be required. Many have taken this to mean that this marking must absolutely occur prior to or in conjunction with the submittal of the Transition Application. We strongly encourage you to mark the site of sample locations as part of your preparation of the Transition Application. This will allow our inspectors doing the "walks" to verify that the locations are accurately pinpointed on the Transition Application map, which the permit reviewers will use to determine if the applicant's data collection plan is acceptable. In other words, we will review your sampling plan based on your proposed sample locations as indicated on the map. If for any reason those sample locations turn out to be different from what was indicated on the map, we cannot guarantee acceptance of your pre-mining data.

In some cases, however, it may be very difficult for consultants to have all sample locations marked on-site prior to or in conjunction with the Transition Applications. We will not require that the marking be done as part of the Transition Application. You may mark the locations later, but we wish you to be aware that we cannot guarantee the acceptability of your pre-mining data if you wait.

If actual site locations marked in the field differ from those shown on the Transition Application map, operators are advised to notify the department prior to initiating monitoring.

Permit and Acreage Fees for Transition Process

As you are aware, all permittees with valid interim program permits who intend to mine on those areas after January 18, 1983, must submit a Transition Application by July 19, 1982, and a comprehensive application for a permanent program permit by January 18, 1983.

No permit fee is required for filing of the Transition Application. A permit fee of \$375 must be submitted with any comprehensive application (\$250 if filed before July 15, 1982).

No acreage fee will be required for any acres covered by the interim program permit. For any additional areas for which no acreage fee has yet been paid, the applicant must submit a fee of \$75 for each acre or fraction thereof (\$50 if the comprehensive application is submitted before July 15, 1982).