



COMMONWEALTH OF KENTUCKY

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
BUREAU OF SURFACE MINING RECLAMATION AND ENFORCEMENT
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RECLAMATION ADVISORY MEMORANDUM 41

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

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

SUBJECT: Recurring Questions - Transition Application
and Permitting Processes

DATE: June 22, 1982

The Division of Permits has received a great number of questions concerning the transition application, the overall transition process and permitting procedures. To accomplish the task of getting the answers to the questions out to BSMRE employees and industry representatives, we have simplified the discussion format of these issues and are including them in this memorandum for your information.

Question 1. What is the purpose of the transition application?

Answer: The purpose is three-fold. First, and most important to operators, the transition application fulfills the requirement of the law and regulations that applications for permanent program permits be filed by two months after primacy for operations which will continue beyond eight months after primacy.

Second, it will define for the Department the existing permit area that is expected to be mined after January 18, 1983. Third, it will allow the Department to review an applicant's preliminary hydrology and geology monitoring program to determine if it is consistent with permanent program objectives.

Question 2. When is the deadline for filing transition applications?

Answer: On or before Monday, July 19, 1982. If an operator fails to file a transition application, he will not be able to continue mining on existing permitted areas beyond January 18, 1983.

Question 3. Does an operator have to file a transition application or can he go ahead and submit the comprehensive application?

Answer: If the operator intends to continue mining on existing operations beyond January 18, 1983, then he must file either a transition application or a complete permanent program application on or before July 19, 1982. If the operator fails to submit one or the other by July 19, he will not be allowed to continue mining on existing operations past P+8.

Question 4. Where do operators obtain transition applications?

Answer: At any of the regional offices or the Division of Permits in Frankfort.

Question 5. What recourse does an operator have in the event his transition application monitoring program does not meet the Department's standards for acceptance?

Answer: The Department will provide suggestions to allow him to improve his plan. However, the deadlines for submission procedures are firmly set and must be adhered to.

Question 6. Will the Department allow the regional offices to conduct walks after the July 19 deadline?

Answer: Because of the volume of transition applications expected to be received in the next three weeks, the Bureau will allow walks to be conducted after the deadline as expeditiously as possible.

Question 7. Are on-site markings of sample locations required at the time of the walk?

Answer: Marking of geologic and hydrologic sampling sites is recommended but not required for the transition application walk. However, on-site markings of sample locations will be required prior to submittal of a comprehensive permanent program application.

Question 8. Will the applicant be allowed to mine on new acreage outside of the existing interim permit if the new acreage is shown on the transition application?

Answer: Mining will not be allowed on any new acreage outside the interim permit until a permanent program permit is issued. The transition application by itself is not sufficient to secure a permanent program permit. The comprehensive application must follow the transition application.

Question 9. What additional information must an applicant submit with his transition application if he is a small operator and has or intends to use SOAP assistance?

Answer: The applicant should submit either the monitoring plan approval letter, the award letter to a consultant, or a copy of the SOAP application for assistance. NOTE: Even though an applicant is involved in the process of obtaining SOAP assistance, he must submit a transition application on any operation that will continue mining after P+8. However, he need not complete the sections pertaining to his monitoring program.

Question 10. What happens to an application submitted with reference to a pending SOAP assistance application and monitoring plan IF SOAP rejects the monitoring program?

Answer: If SOAP rejects the application, SOAP will notify Permits and the applicant. The applicant will then bear responsibility for submitting the needed additional information within 30 days.

Question 11. Is there a means for coordinating of SOAP and Permits' review criteria for monitoring plan approval?

Answer: If the applicant qualifies for SOAP assistance, then the SOAP staff will be the review and ultimate approval agency for the monitoring program of the applicant. Both SOAP and Permits will use the Hydrology and Geology Guidelines as a basis for review.

Question 12. How will the differences in SOAP's review and Permits' review affect the information submitted in a permanent program application?

Answer: The same technical criteria will be used by SOAP and Permits for the review of permanent program applications to minimize inconsistencies which could develop in the review process. Both reviews are to be based on the Guidelines which reflect the regulation requirements in the permanent application.

Question 13 Are surface and ground water monitoring programs required for rail and port facilities?

Answer: If these facilities require a permit (see RAM #33), the hydrologic monitoring will normally be required.

Question 14 Are permitted areas that have been reclaimed, except for haul roads, required to submit geologic and hydrologic monitoring plans?

Answer: Haul road-only applications do not need to collect geologic overburden information or submit plans for surface water or ground water monitoring. However, a transition application must still be submitted.

Question 15 In mountaintop removal areas or other areas with several watersheds, how many watersheds need to be sampled?

Answer: One out of every three or fraction of three first-order watersheds disturbed by the operation must be sampled. See Article 3.1.2, "Selection of Sampling Sites and Sample Parameters," of the Guidelines for additional information.

Question 16 Is the 1/4 mile or 1/2 mile spacing for geologic sampling required from the edge of the mining area or from a hollowfill, sediment pond, etc.?

Answer: It is recommended that this spacing be followed for overburden geologic sampling from the edge of the area of coal extraction. See Article 2.4, "Sampling Requirements," of the Guidelines for additional information.

Question 17 For the map requirements section: Should the applicant locate areas that are degrading surface or ground water quality or quantity in watersheds receiving discharge from the permit area? For example, areas that have been heavily logged and timbered or areas of oil well drilling operations, etc.

Answer: Yes, all these areas should be identified, plus any that have potential to degrade water.

Question 18 In estimating the point of mining progress at P+8 months, should the operator be conservative or not?

Answer: Conservative - because if he estimates far too much, then he may not have any monitoring points to cover that area if something goes wrong and he doesn't mine out close to where he predicted.

Question 19 If an operator wishes to plan for future expansion, what steps should be involved in pre-permit planning?

Answer: The applicant should show in the transition application all areas he intends to include in his permanent program permit application. Planning is critical because background monitoring data must be provided before the operator can mine any new area.

Question 20 If an operator wishes to combine a surface operation and an underground operation for ease of data submission, which application should be used?

Answer: Providing that the areas are contiguous, the operator may submit information for both operations on an underground application.

Question 21 Are the Hydrology and Geology Guidelines actual standards or regulations?

Answer: No. The Guidelines are not law or regulations. The Guidelines contain recommended technical procedures for meeting the hydrologic and geohydrologic requirements of the permanent program. See the Foreword to the Guidelines (Foreword Revised May, 1982), for additional explanation on the purpose of the Guidelines.

Question 22 What deviations from the Guidelines are acceptable?

Answer: Parameters are established by law or regulation. Techniques for data collection and analysis are recommendations; other techniques are allowed but they must be justified and documented. Final approval is dependent upon case by case review.

Question 23 Are Level I determinations required for existing prep plants?

Answer: Yes

Question 24 Upon filing of the comprehensive application before P+8, does the operator have to pay acreage fees again on acres originally under interim permits?

Answer: No. A permit fee is required but acreage previously permitted will not require another acreage fee.

Question 25 Do two-acre-or-less operations need to file transition applications?

Answer: No, because these operations are not covered under the permanent program regulations.

Question 26 Do underground operations need to file transition applications?

Answer: Under primacy, the Department expects all underground operations to be classified as over two acres (see RAM 39). All existing underground operators are advised to file a transition application if mining beyond January 18, 1983 is expected.

Question 27. What is meant by the word "vicinity" with regard to the ground water user's survey?

Answer: Applicants should inventory existing ground water withdrawal points which could be adversely affected by the mining operation. The area over which a mining operation could adversely affect ground water withdrawals is dependent on several site specific factors including the type of operation, the location and type of ground water users, the geology of the mine site and surrounding area, and the location and type of aquifers. It is virtually impossible to specify a fixed distance from the mine site which would satisfy all of the above site specific factors. See Article 4.2, "Reconnaissance," of the H & G Guidelines for further information.

Question 28. For water testing, sampling and monitoring, do all the houses with wells in a vicinity need to be sampled and tested?

Answer: For a Level I determination it may not be necessary to sample any domestic wells. For a Level II determination it may be desirable to sample selected domestic wells for the analysis, provided permission can be obtained from the owner. See Articles 4.3, 4.4 and 4.5 of the H & G Guidelines for further information on the Level I and Level II determination.

Question 29. How does an applicant monitor a first-order watershed which generally has no-flow during the summer months?

Answer: It may be necessary to collect samples on the recession side of storm hydrographs.

Question 30. What are the standards for degraded water quality?

Answer: At the present time, the Bureau has no quantitative standards for implementing this Level I Criterion. Until those standards are developed, the Bureau will consider requests for degraded water quality on an individual basis. Also see Article 4.3.3 of H & G Guidelines.

Question 31. When trying to establish a Level I determination of negligible impact for reasons of insignificant supply potential and there are no wells, no ground water users and no dwellings, how far down do you have to drill to look for a significant aquifer?

Answer: The depth and areal extent of the investigation is dependent on the type of mining operation and the geology of the mine site and surrounding area.