



Kentucky
Department for Surface Mining
Reclamation and Enforcement

Reclamation Advisory Memorandum

From: Commissioner Elmore C. Grim *E.C.G.*

Date: August 25, 1982

Subject: Compliance with Approved Designs

RAM# 43

Federal and State surface mining law emphasize the importance of advance planning. This includes requiring that all significant structures be designed by a qualified registered professional engineer and that certain maps, plans, and drawings be done by a R.P.E. in order to ensure that the proposed operation is planned by competent professionals.

Furthermore, Federal and State Law emphasize the importance of making sure that the operation is carried out according to the approved plan. This includes requiring that a R.P.E. conduct inspections during the construction of significant facilities to ensure that the facilities are constructed according to the approved plan and to so certify to the regulatory authority. However, we have discovered numerous cases where the operator has utilized engineers in the design phase, but has apparently ignored the approved designs once the operation begins.

One mechanism for dealing with this problem is our recent development of standard certification statements that must be used by all R.P.E.s. Many of the certifications of construction received in the past have had such vague language that they were meaningless and did not reflect any significant involvement or responsibility of the R.P.E. that signed the statement. Now, in order to honestly sign the new required statement, the engineer or someone under his supervision, must have conducted adequate inspections during the construction process so that he is sure that the construction was done according to the approved plan.

This means that operators will have some increase in operating costs in order to pay for these additional engineering services. Operators that utilize consulting firms should be aware that the new certification process will require significant additional man-hours by the engineering firm. Operators that have their own engineering staff should be aware that their workload will increase.

However, these additional costs may be minimal when compared to the alternative. Failure to follow the approved design may have many adverse consequences to the operator and to the environment. Failure to follow the approved design and to comply with the certification requirements will result in issuance of a notice of noncompliance. In some cases, a cessation order will be issued that will halt mining

activities until the structure is reconstructed and/or the permit is revised. In the case of sedimentation ponds, no disturbances can occur in the drainage area until the structure is certified. Furthermore, failure to follow the approved designs could easily establish a "pattern of violation" that would mean that the department would initiate show cause proceedings to determine if the permit should be revoked or suspended. It only takes noting similar violations on three occasions to mandate this procedure.

Therefore the operator should weigh the additional engineering cost against the costs of permit revisions and/or reconstruction, civil penalties, downtime under cessation orders, and suspension or revocation of the permit.

The Regional Offices will have standard procedures designed to accomplish two objectives:

- 1) To monitor operations to ensure that structures are properly and timely certified and
- 2) To evaluate the accuracy of the certifications to prevent false certifications. Evidence of fraud or incompetence on the part of an engineer will be forwarded to the Board of Registration for appropriate action.

You must understand that the Department is very serious about this. Operators must follow their approved designs and must obtain the necessary engineering certifications. We will take whatever action is necessary to ensure that this is enforced and to ensure that the "certification by R.P.E.s" becomes a meaningful process meeting the intent of the law.