



Kentucky  
Department for Surface Mining  
Reclamation and Enforcement

# Reclamation Advisory Memorandum

From: Commissioner Elmore C. Grim *E.C.G.*  
Subject: Status Report on Transition Application Review

Date: August 25, 1982

**RAM# 46**

The Division of Permits has completed an initial assessment of the transition applications which were submitted to the Department on or before July 19, 1982. Based on this review, the following conclusions have been reached:

- (1) It appears that between 60 and 70 percent of all transition applications will be unacceptable due to major omission of information which was requested. Letters will be mailed to each of the engineering firms that have made such submissions and they will be given thirty (30) calendar days to correct the transition application. If such corrections are not submitted, the applications will be designated as incomplete and the mine operator will lose the right to mine after January 18, 1983 unless he has received a permanent program permit by that date through the regular (non-transition) process.
- (2) The Department is developing a classification system which will be reflected in the letter sent to applicants concerning the transition application. This system will eventually be used to determine the priority of review and approval (or denial) of comprehensive permanent program applications which must be submitted before January 18, 1983.
- (3) The Department will be issuing minimum requirements as to what will be accepted as a "complete" permanent program application in a September RAM. Additionally, a schedule recommending when applications should be submitted will be developed at that time.
- (4) As a part of the transition application process, it has become apparent that certain mining operations are likely to mine out prior to receipt of a permanent program application. The transition application letter will make clear which operations are considered to be exempt from premining data requirements because of the expectation that an operation will be mined out. It is expected that the exemption requirements will principally apply to those operations which are expected to have a relatively short permit life, primarily small acreage strip mining operations.

Each of these items is discussed in more detail below:

#### QUALITY OF TRANSITION APPLICATIONS

The kindest description that can be given to the general quality of the transition applications is disappointing. The Department made a major effort to develop: (1) a simplified application form, (2) straightforward instructions, (3) a special seminar to review the application form and discuss what must be submitted, (4) several reclamation advisory memoranda to answer questions that were raised and (5) relatively easy access to staff within the Division of Permits to answer questions. Despite this, a large portion of the transition applications have been submitted with obvious errors, little recognition of what was requested in the instructions, excess information (in many cases not related to the transition application), and major omissions.

Letters will be sent to the transition applicant representative for all applications which have been submitted. These letters will be of three general types:

- (1) Transition Application is acceptable as submitted. The Department will comment on the adequacy of your proposed data monitoring program and the expectation that it is likely to be acceptable if it is implemented as identified in your transition application.
- (2) The application is acceptable but there are certain significant deficiencies or recommendations for change. In a few cases, you will be requested to resubmit your transition application with corrections; these corrections must be made within thirty (30) calendar days. However, in most cases you will be advised to make changes in certain areas and include these changes in your comprehensive application when it is submitted.
- (3) The application is unacceptable due to major deficiencies which make it impossible for the Department to evaluate the adequacy of the data monitoring program. In this case, the submitting agent will be given thirty (30) calendar days to resubmit the application with corrections. We expect that a general checklist of the deficiencies will be provided with the letter. However, many of these deficiencies are viewed as a failure to follow the previously published instructions and our staff time is limited in going into detail in citing specific deficiencies.

August 25, 1982

Page three

In those transition applications which have been reviewed, the Division of Permits has observed a high correlation between those that are unacceptable and the engineering firm which has prepared the application. After review of ten or twenty applications prepared by the same engineer, if it is found that the same problems occur consistently with applications, the Division of Permits will conduct cursory reviews of all remaining transition applications submitted by that engineering firm with the expectation that all of them will be ruled to be unacceptable. The Division of Permits has little choice but to follow this process since its limited staff is being forced to review these applications more than once because of major omissions or errors in the submission of the transition applications.

The Department will also make the effort to meet with firms that have submitted large numbers of deficient applications in order to review the deficiencies of their submissions so that all applications prepared by the submitting firm can be corrected. For those firms that believe that they are not getting support and information from operators, please advise those operators that unless we get a substantially complete transition application, their application will be considered not to be complete, which amounts to a denial of the application. A denial would mean that operators could not mine after January 18, 1983 unless they had been issued a permanent program permit through the regular (non-transition) permit process.

#### ESTABLISHMENT OF A PRIORITY SYSTEM

As part of the letter which will be sent to transition applicants, the transition application will be identified by a class code based on its characteristics. A priority system is being developed by the Department in order to determine the sequence of review of comprehensive applications by the Department. The meaning of your class code may not be finally known at the time you are sent the transition letter, but a final determination of the priority of your application will be described in a RAM to be issued in September. The priority of the comprehensive application is important in that it will likely determine the projected schedule for approval (or denial) of the application by the Division of Permits. This in turn will be a factor in determining the status of mining on the property on your existing permit, the relative emphasis of your application to an engineering firm which may have to make technical corrections to the permanent program application, and a likely schedule for submitting bond that will be required under the permanent program.

#### DEFINITION OF A COMPLETE APPLICATION

Also during September, the minimum requirements for a complete comprehensive permit application will be defined for applications which must be submitted under the permanent program. This definition is important to avoid the problems that have existed with the transition

August 25, 1982

Page four

applications. The Department will publish the definition of a complete application relatively early in order to avoid the major omissions which have characterized the transition application.

The Department invites comments on what should be defined as a complete application. The Department has received a number of inquiries from firms which are currently preparing permanent program applications and these inquiries have tended to identify certain areas of confusion. The Department is committed to trying to resolve these problems as quickly as possible and would like to receive comments on which sections are causing the greatest difficulties. Such comments should be submitted either by phone or in writing to the Division of Permits or the Commissioner's office by September 17, 1982.

#### EXEMPTION FROM DATA COLLECTION

Because it is apparent that certain operations can be expected to be mined out before they will receive a permanent program permit, the transition letter which is being sent to all applicants will in certain cases identify operations which are exempt from data collection. The entire basis for this exemption is the expectation that an existing interim permit operation will be mined out prior to receiving a permanent program permit. The Department will be conservative in granting these exemptions. Exemptions will not be given for surface mining operations which will be adding new areas to the existing permit, for underground operations, for preparation plants or for permits which are presently undisturbed.

The granting of exemptions is a determination which is made by the Division of Permits from information supplied in the transition application package and is not based on specific requests made by the applicant.

#### WAIVER REQUEST

The granting of geologic waiver request, Level I ground water determinations or the transfer of surface water data is in no way tied to data collection exemptions. These special types of requests made in the transition application will continue to be evaluated to ensure valid criteria are being utilized but will in no way relieve the applicant from providing full supportive documentation at a later date.

The department will not grant any waiver or exemption from data collection or reporting solely on the basis of previous waivers or variances that were granted for the existing interim permit. It is the department's view that allowing waivers or variances on this basis would be inconsistent with the intent of the permanent program.