



Kentucky  
Department for Surface Mining  
Reclamation and Enforcement

# Reclamation Advisory Memorandum

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

Date: November 10, 1982

Subject: Operations of Two Acres or Less

## RAM# 52

### GENERAL

Reclamation Advisory Memorandum #36 (June 8, 1982) discussed the permanent program regulations for operations of two acres or less ("two-acre" operations), and noted that areas overlying underground workings must be counted in the acreage calculation. Reclamation Advisory Memorandum #45 (August 25, 1982) set forth the new OSM rule on two-acre operations, which contains criteria for determining how to calculate the acreage. The federal criteria are incorporated into Kentucky regulations. We will use the very same criteria as set forth in the attachment to Reclamation Advisory Memorandum #45.

Briefly, all affected areas of any coal extraction operation and incidental activities, including haul roads and areas overlying underground workings, must be added together. If the sum exceeds two acres, then the requirements of 405 KAR Chapters 7-24 apply. If the sum is two acres or less, 405 KAR 26:001E, which incorporates the "interim" regulations of 405 KAR Chapters 1 and 3 and establishes minimal standards, applies.

Acreage of related operations must be added together for the computation. Operations are related if they meet all three of the following tests:

- 1) they occur within 12 months of each other; and
- 2) they are physically related (operations may be physically related even if they are not contiguous); and
- 3) they are under common ownership and control.

See the federal regulation reproduced in Reclamation Advisory Memorandum #45 for a more complete explanation of the criteria for determining what constitutes an operation of two acres or less. The above explanation is only a summary.

### PERMITTING

#### Deadlines:

As previously noted in RAM #36, some underground mining operations which have two-acre permits under the interim program will be larger than two acres when the areas overlying underground workings are counted. All operations larger than two acres, if intended to go on after January 18, 1983, were required to submit transition applications by July 19, 1982 and must submit a comprehensive permanent program permit application by January 18, 1983. If these deadlines have not or will not be met, mining should cease on January 18, 1983.

Public Notice: Two-acre operations will continue to be advertised for one week rather than the four weeks required for larger operations.

Permit Term: The two-acre permit will be issued for a term of two years for surface activities (including augering) and for a term of five years for underground operations.

Bond Amount: Two-acre operations now have a maximum bond of \$2,000 (a maximum of \$1,000 per acre). However, if an applicant adds surface acreage, thereby making the operation more than two acres, his bond will be raised to a minimum of \$10,000 in accordance with permanent program regulations governing larger operations, and other permanent program requirements will also apply.

#### ENFORCEMENT

##### Surface Activities:

The minimal requirements of the two-acre regulations apply only to small operations, not to the first two acres of any larger operation. If an operator obtains a two-acre permit and later expands his operation to affect a surface area greater than two acres, he immediately loses the two-acre status, not only for any additional acres, but also for the two acres originally permitted.

If a person holding a two-acre permit affects a surface area greater than two acres, the Department will issue an order requiring that person to cease mining operations until he has obtained a full permanent program permit. This permanent program permit must comply with the permanent program regulations with regard to the entire area to be affected, including the original two acres. This means that the new permit must provide for, among other things, proper road construction, sediment pond construction, and highwall elimination for the entire area, just as if no two-acre permit had been granted in the first place.

If the permittee then fails to comply with the Department's order to cease operations and obtain a full permanent program permit, the Department may take measures to forfeit the permittee's bond and to prohibit any future mining by that permittee in Kentucky. The Department will not allow the two-acre permit to be used as a means of mining more than two acres without complying with the permanent program regulations.

Underground Activities:

Many underground mines, two acres or less under the interim program, become greater than two acres by operation of law because areas overlying underground works are counted in the permit area under the permanent program, even though the permittee does not affect a greater surface area. As noted under "PERMITTING - Deadlines," any such mine must cease operations on January 18, 1983 if the permittee has not submitted a transition application and comprehensive application by certain deadlines. If the permittee does submit these applications on time, he may continue to operate under his interim two-acre permit until the permanent program permit is issued or denied by the Department. If it is denied, the permittee must immediately begin final reclamation of his permit area according to the two-acre regulations. If the permanent program permit is granted, the permittee must begin conducting his mining and reclamation operations in accordance with the new permit.

If you have any questions, please call Laurie Keller, (502)564-6940 or Richard Shogren, (502)564-2320.