

EUGENE F. MOONEY
SECRETARY



JULIAN M. CARROLL
GOVERNOR

COMMONWEALTH OF KENTUCKY
DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
BUREAU OF SURFACE MINING RECLAMATION AND ENFORCEMENT
GENE BRANDENBURG
COMMISSIONER
FRANKFORT, KENTUCKY 40601

RECLAMATION ADVISORY MEMORANDUM 78-7

TO: Coal Operators and Company Engineers
Consulting Engineers
BSMRE Division Directors and Area Engineers

FROM: Gene Brandenburg, ^{JB} Commissioner
Bureau of Surface Mining Reclamation and Enforcement

SUBJECT: Extension from February 3, 1979 to August 3, 1979
of deadline for submission to OSM of Kentucky's
application for state primacy under P.L. 95-87; and
Expiration of Small Operators Exemption, December 31,
1978

DATE: December 27, 1978

I am very pleased to announce that Governor Julian M. Carroll and Secretary Eugene F. Mooney have obtained for Kentucky an extension of the deadline for filing our application for state primacy under P.L. 95-87, the Surface Mining Control and Reclamation Act of 1977. The extension comes as a result of recent communications between Governor Carroll and Cecil Andrus, Secretary of the U.S. Department of the Interior, and in response to the formal request for extension submitted by Secretary Mooney to OSM Director Walter N. Heine. Kentucky is eligible to receive the extension since initial action by the 1978 Kentucky General Assembly was necessary, and future supplemental action by two Committees of the General Assembly is necessary, to enable the department to seek primacy under P.L. 95-87. The primary purpose of this advisory memorandum is to notify you of this extension and to explain its significance to the coal industry in Kentucky and to the enforcement responsibilities of this bureau.

The Interim Regulatory Program. We are now operating under what is called the interim program, in which some but not all of the requirements of P.L. 95-87 are in force. This interim program has been in effect since February 3, 1978, under interim federal regulations published December 13, 1978, and under interim state regulations since May 3, 1978. This interim program will continue

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~~until it is replaced by a permanent program in one of two ways:~~

- (a) Kentucky applies for and receives primacy under P.L. 95-87, at which time a state-operated permanent program with federal oversight will take effect; or
- (b) The U.S. Office of Surface Mining establishes a federally-operated permanent program in Kentucky.

The Deadline Extension. P.L. 95-87 requires that coal producing states desiring to obtain state primacy in the permanent program must by February 3, 1979, submit to OSM an application for primacy, unless a six-month extension to August 3, 1979, is granted due to the need for actions by the state legislature. If the state application is not submitted by the February 3, 1979 or August 3, 1979 deadline, OSM is required to proceed to establish a federal program in the state. Since the application for primacy must contain final state regulations for the permanent program, and since the permanent federal regulations upon which permanent state regulations must be based will not be finalized before mid-January, 1979, this department could not reasonably have met the February 3, 1979 application deadline. Thus the extension of the deadline to August 3, 1979 has prevented the early establishment of a federal permanent program in Kentucky, and will provide us some essential additional time in which to prepare for primacy.

It remains to be seen whether even this extended time will be sufficient. However, we currently expect to apply for primacy by August 3, 1979, and hope to receive primacy before June 3, 1980. If we do not achieve primacy by that date, a federal permanent program will be established in Kentucky.

The Permanent Regulatory Program. The permanent program, whether it is state-operated or federally-operated, will bring into effect all the requirements of P.L. 95-87, including extensive new permitting requirements, several additional environmental protection performance standards, and procedures for declaring lands unsuitable for mining. The permanent program will also establish the small operator assistance program, and make federal funds available for the reclamation of abandoned mined lands.

On September 18, 1978, OSM published proposed regulations for the permanent program. These proposed regulations have been very controversial, and a great many comments have been submitted

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suggesting changes to the proposed regulations. This department's comments totalled more than 250 pages. Hopefully, the permanent program regulations will be extensively revised. The permanent program regulations are currently scheduled to be published in final form in mid-January, 1979. These final regulations will contain requirements which states must meet in order to qualify for primacy. They will also contain new permitting, procedural and performance standards requirements which operators must meet after a permanent program is established in a state under state primacy or under a federal permanent program. These new requirements upon operators will not take effect immediately upon publication of the final federal regulations for the permanent program. The interim program regulations will continue in effect until the interim program in Kentucky is replaced by a permanent program, which is expected to take place between August 3, 1979, and June 3, 1980.

Small Operators Exemption. Please remember that the small operators exemption expires on December 31, 1978. Beginning January 1, 1979, those qualified small operators who have been conducting operations under the exemption will be required to comply with requirements for returning to approximate original contour, complete highwall elimination, and all other performance standards which non-exempt operators have been required to meet since May 3, 1978. Beginning January 1, 1979, this bureau will require that all previously exempted small operations be brought into full compliance with the law and regulations.