



Kentucky  
Department for Surface Mining  
Reclamation and Enforcement

# Reclamation Advisory Memorandum

From: C. Thomas Bennett, Commissioner

Date: February 3, 1989

Subject: Procedure for Extensions to Abatement Deadlines

## RAM#98

There can be circumstances which would necessitate the extension of abatement deadlines beyond 90 days. The need for such an extension most commonly arises when a permit revision must be obtained before a violation can be corrected. Some operators have been waiting right up to the abatement deadline (the 90th day) before submitting requests for extensions. Since the Director of the Division of Field Services must approve these requests, it is extremely important that they be submitted early enough to allow appropriate action on them prior to the deadline.

When a notice of non-compliance is issued, the inspector sets a reasonable deadline for completion of remedial actions, if any. If the permittee fails to complete the required remedial actions by the deadline, but the failure is not caused by lack of diligence of the permittee, the inspector can extend the deadline by not more than 30 calendar days. With approval of appropriate supervisory personnel in the Regional Office, two additional extensions up to 30 days each can be granted. However, the cumulative total of these three extensions cannot extend the compliance deadline more than 90 calendar days from the date the non-compliance was issued.

Under certain limited conditions set forth in 405 KAR 12:020 Section 2(4), the department can extend the abatement deadline beyond 90 calendar days from the date the non-compliance was issued. The department has received a number of requests to extend abatement deadlines beyond 90 days that do not meet the criteria required in 405 KAR 12:020 Section 2(4). To eliminate any confusion regarding such extensions, the following procedure shall apply, effective immediately.

At the appropriate inspection prior to 90 calendar days after the non-compliance was issued (and prior to the end of the 3rd extension granted by the Regional Office), the inspector shall note in the comment section of the Mine Inspection Report:

"If you need an extension beyond 90 days from the date of the non-compliance and can meet the criteria in 405 KAR 12:020 Section 2(4), a written request shall be submitted and approved prior to the date of the end of the third extension or a Failure to Abate Cessation Order will be issued. It is recommended that the request be filed several days prior to the 90 days."

(over)

When a request for extension beyond 90 days is received by the Regional Administrator, he/she shall review the request to determine whether it meets the criteria of 405 KAR 12:020 Section 2(4). The Regional Administrator shall attach to the request a cover memo stating his/her justification and recommendation to the Director of the Division of Field Services. If the Director determines that the request does not meet the criteria, a Failure to Abate Cessation Order shall be issued. If the Director determines the request meets the criteria, the extension shall be granted in accordance with the terms of the Director's decision.

Requests for extensions beyond 90 days must meet one of the criteria of 405 KAR 12:020 Section 2(4)(b), which are listed below for your information:

1. The permittee of the ongoing surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but such permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and will not be issued prior to 90 days after the valid permit or approval expires or is required;
2. There is a valid judicial order precluding abatement within ninety (90) days to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and to which he or she has no other effective legal remedy;
3. The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or
4. Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

If you have any questions or comments regarding this procedure, please contact Carl Campbell, Director of the Division of Field Services at (502) 564-2340.