



Kentucky
Department for Surface Mining
Reclamation and Enforcement

Reclamation Advisory Memorandum

From: William J. Grable, Commissioner
Subject: New Cultural and Historic Resources Regulations

Date: August 9, 1989

RAM# 99

On June 28, 1989, five (5) amended DSMRE regulations (405 KAR 8:010, 8:020, 8:030, 8:040, and 24:040) became effective. These amendments contain new requirements for the identification and protection of significant cultural and historic resources, and were designed as the state counterpart to the federal Office of Surface Mining (OSM) regulations promulgated on February 10, 1987. The purpose of this RAM is to briefly discuss the regulations which authorize the Department to require archaeological surveys, to address their impact on the permitting process, and to introduce new procedures to be followed by applicants seeking a permit to mine coal.

IMPACT OF THE REVISED REGULATIONS

The immediate impact of these revised regulations on permit applicants is the requirement that applications must contain a description of all sites listed or eligible for listing on the National Register of Historic Places, and all other known archaeological sites, prior to being determined administratively complete (AAA). It must be emphasized that eligible sites include not only those resources which have been previously located and officially determined eligible for listing, but also those currently unknown sites which, if identified and evaluated, would be found to be eligible. This position has been affirmed by the federal courts and the federal OSM. It is therefore the responsibility of the applicant to identify and describe all such eligible sites. In the absence of existing data, this identification process may be accomplished through an archaeological survey. Because DSMRE lacked specific authority to require archaeological surveys of permit applicants prior to the effective date of the revised regulations, the decision to conduct archaeological surveys in advance of submitting a permit application was previously left to the applicant's discretion. Now that DSMRE has the express authority to require surveys, the decision to conduct an archaeological survey is no longer an option. If DSMRE determines, after consultation with the State Historic Preservation Officer (SHPO), that a proposed permit area requires an archaeological investigation in order to identify and evaluate potentially significant sites, the survey will be required.

MAKING THE DECISION TO REQUIRE A SURVEY

The Department will consult with the SHPO on a case by case basis to determine when archaeological surveys will be required of applicants. When surveys are required, they must be conducted and the results submitted to the Department and the SHPO before an application can be determined administratively complete. To assist the Department in determining when surveys are to be required, and to minimize delay to the applicant, it is essential that the applicant follow the procedures given below when preparing a permit application.

1. For original and amendment applications: At the earliest possible date, submit one (1) original and two (2) copies of the preliminary application to the appropriate regional office.
2. When the preliminary application is transmitted to the Division of Permits, archaeologists will review the application to determine if a survey may be required.
3. For revision applications: At the earliest possible date, submit a written request for lands unsuitable information to the Program Development Section. Include with your request a Mining and Reclamation Plan (MRP) map and detailed information on previous disturbances to the proposed revision area. PDS archaeologists will review this information to determine if a survey may be required.
4. The applicant will receive notification of the PDS review, and will be advised that comments are being requested from the SHPO.
5. After reviewing the application, PDS will solicit comments from the SHPO concerning the need for an archaeological survey of the proposed permit area. If the PDS review indicates that a survey may be necessary, the SHPO will have 30 days in which to provide DSMRE with a written recommendation on whether or not a survey should be required. If the PDS review indicates that a survey should not be necessary, the SHPO will have 10 days in which to submit written comments agreeing or disagreeing with the PDS review.
6. Once the SHPO's recommendation is received by PDS, this recommendation will be carefully considered, and PDS will notify the applicant in writing whether or not a survey is required. The SHPO comments will be provided to the applicant for inclusion in the permit application package.
7. If an archaeological survey of the proposed permit area is not required, this determination must be documented in the application by the inclusion of appropriate DSMRE and SHPO correspondence.
8. If an archaeological survey is required, the survey must be completed prior to the permit application being deemed administratively complete.

9. PDS will provide the applicant with a list of professional archaeologists qualified to conduct archaeological investigations within the Commonwealth of Kentucky. ~~IMPORTANT: ALL SURVEYS MUST BE CONDUCTED BY A PROFESSIONAL ARCHAEOLOGIST.~~ A description of the qualifications for a professional archaeologist are available upon request from the SHPO or DSMRE.
10. Once the survey has been completed, five (5) copies of the resulting survey report must be submitted to PDS for review and distribution to appropriate agencies, including the SHPO. IMPORTANT: DO NOT PUT THE SURVEY REPORT IN THE PERMIT APPLICATION.
11. The SHPO has 30 days to review the applicant's archaeological work. If the report is accepted, and no further work is required, PDS will notify the applicant and processing of the permit application can continue.
12. If the SHPO determines that additional work is needed, and if the Department concurs with this determination, PDS will notify the applicant concerning the level and detail of any additional work found to be necessary.
13. If the additional work involves further survey and/or subsurface testing to identify and describe archaeological sites which may be eligible for listing, this work must be completed before the application can be determined technically acceptable (TAC).
14. If the additional work involves the mitigation of impacts to National Register eligible sites, this work must be completed to the satisfaction of the Department prior to the sites' disturbance from mining-related activities. Mitigation operations can be conducted concurrently with permit application administrative and technical review. If mitigation activities are incomplete at the time of permit approval, a condition will be placed on the permit requiring that all such activities be completed to the Department's satisfaction prior to disturbance of the archaeological site by mining-related activities.

In summary, since the effective date of the new cultural resources regulations, the decision to conduct archaeological surveys is no longer optional. The purpose of this RAM has been to advise permit applicants of changes in permitting procedures necessitated by these new regulations. There are two important points to remember: applicants for original permits and applicants for amendments will no longer be required to submit written requests to PDS for cultural and historic, lands unsuitable, or fish and wildlife information. This information will be sent to the applicant automatically when a preliminary application is filed. However, since revision applications do not require a preliminary to be filed, these applicants must continue to request this information from PDS.

If you have any questions about the procedures described in this RAM, please contact Mike Wilborn (ext. 692), or Jim Adamson (ext. 684) at 502/564-2320 in the Division of Permits.