

Reclamation Advisory Memorandum

RAM # 154

Kentucky Energy and Environment Cabinet

Department for Natural Resources

From: Steve Hohmann, Commissioner

Date: May 4, 2012

Subject: Remining Issues and Procedures

This RAM supersedes RAM# 129. Changes from the original RAM# 129 are presented in *italicized, bold text*.

Introduction

The Kentucky Department for Natural Resources (DNR) strongly supports and has been encouraging remining activities for several years.

Remining benefits both the people and the environment of Kentucky through high quality reclamation of abandoned mine lands at little or no cost to government.

Remining benefits coal mining companies by providing cost-saving and risk-reducing incentives in the following areas:

- Base bond amount
- Bond liability period
- Highwall elimination
- Revegetation success standards
- Premining pollutional discharges ("Rahall relief" under KPDES)
- Spoil disposal on offsite existing benches under AML Reclamation Agreement
- Permit blocking due to violations

The purpose of this RAM is to discuss certain issues and procedural matters related to remining operations and implementation of the incentives mentioned above.

DNR cannot offer remining incentives regarding federal Abandoned Mine Land fees, Kentucky coal severance taxes, or Kentucky unmined mineral taxes.

Definitions

"Remining" is defined at 405 KAR 16:001 as conducting surface coal mining and reclamation operations which affect previously mined areas.

"Previously mined area" is defined at 405 KAR 16:001 as land that was disturbed or affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to permanent program standards and for which there is no continuing responsibility to reclaim to these standards.

Remining areas include sites previously disturbed by all forms of surface mining activity, underground mine face-up areas, coal refuse piles or excess spoil disposal areas, coal preparation plants or coal load-out facilities, access roads, sediment control structures, and landslides or mine spoil pushed off the mine bench and located below the coal seam outcrop.

"Unanticipated event or condition" is defined at KRS 350.010(22) to mean an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit. KRS 350.085(7) provides that permit blocking for unabated violations under KRS 350.08516) shall not apply to a permit applicant with a violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining and under a permit for remining held by the applicant.

Eligibility, Permitting, and Bonding

KRS 350.095(2) provides a two-year bond liability period on permitted sites which qualify as lands eligible for remining.

Areas eligible for the two-year bond liability period will be determined by the total number of previously mined acres located within the permit area and the proposed method of operation. On a case-by-case basis, for each acre of previously mined area that is remined and reclaimed, up to one additional acre, as necessary to facilitate proper reclamation of the site, may be considered part of the remining area.

In general, any hollowfills created by a remining operation will have a five-year bond liability period. However, if a majority of the area in the proposed hollowfill qualifies as a previously mined area, the entire hollowfill site will be considered a remining area and therefore subject to a two year bond liability period.

The surface disturbances associated with second cuts on existing highwalls, which may occur with contour, mountaintop removal and area mining operations, are eligible for the two-year bond liability period.

Eligibility for an entire mountaintop operation, point removal operation or area mining operation which includes a substantial amount of previously unaffected area will be determined on a site-by-site basis. The site evaluation will include, but is not limited to, the following criteria:

- the total number of acres of previously mined area located within the proposed permit;
- those lands that facilitate the reclamation of the previously mined lands; the overall topography of the proposed mining site;
- the use of existing benches for the disposal of excess spoil (if proposed); and
- any other relevant site-specific conditions.

Undisturbed surface areas that overlie underground mine works (including augering) that were created prior to August 3, 1977, do not qualify as previously mined areas.

If a permit application includes both new mining and remining areas, the application must contain an incremental bonding plan. The plan must delineate those areas which qualify for the two-year bond liability period and those areas which will be held to the five-year bond liability period. For bonding purposes, the permittee may consolidate into one increment, areas which qualify for the two-year bond liability period that are under the same surface ownership.

Bonds for all areas deemed to meet the criteria of Part II, shall be calculated in accordance with 405 KAR 10:015 Sections 7 and 8. In addition, supplemental assurance, if applicable to the remining operation, shall be assessed in accordance with 405 KAR 10:015, Section 11.

Existing permittees who wish to take advantage of remining incentives must submit a remining modification plan to allow DSMRE to recognize the implementation of the incentives. This remining midterm review process, which is not subject to permit revision fees and time frames, will be used to correct or update those portions of the permit application as necessary to authorize use of the incentives by the permittee.

Spoil Disposal and Highwall Elimination

The following procedures apply to the use of excess spoil disposal areas and highwall elimination associated with remining operations:

All spoil generated during the second cut operation must be utilized to eliminate as much highwall as that volume of spoil will provide for. The use of hollowfills as permanent spoil disposal areas will only be approved when the volume of spoil generated by the remining operation is more than that amount necessary to eliminate all existing highwalls. DSMRE will consider alternative proposals on a case-by-case basis.

If the operational plans for an approved remining permit only involve the "facing up" of an existing highwall to facilitate augering or "highwall mining", all reasonably available spoil, as defined by 405 KAR 16:001, must be used to eliminate the highwall to a height no less than four (4) feet above the coal seam affected. In some instances, this may require the use of excess spoil generated by mining in adjacent areas.

Complete highwall elimination is not required under 405 KAR 16:130, Section 5, but is encouraged, on existing mine benches which are used solely for the purpose of excess spoil disposal. Spoil may be placed only on the solid portions of the existing benches.

Revegetation Success Standards and Bond Releases

As required by KRS 350.095 (2), on lands eligible for re-mining, the permittee's bond liability period will be no less than two (2) full years after the last year in which augmented seeding, fertilizing, irrigation, or other work was performed to assure compliance with the applicable standards.

The ground cover standard for re-mining areas, 405 KAR 16:200, Section 5(3), requires that the ground cover of living plants shall not be less than the ground cover existing before the redisturbance and shall be at least 80 percent with a statistical confidence of 90 percent with no sign of significant erosion.

For re-mining permits with an approved post-mining land use of pastureland or cropland a productivity demonstration will not be required. However, the ground cover standards must be met and each of the approved species must be present.

For re-mining permits with an approved post-mining land use of forest land or fish and wildlife habitat, the ground cover standard must be met and each of the approved tree and shrub species must have been planted to the approved stocking rate and must still be present in significant numbers. In determining the success of survival of trees and shrubs necessary for bond release the department will take into account, on a case-by-case basis, the adverse effects of the previously mined conditions upon the productive capability of the reclaimed land.

Small, temporary on-bench sediment structures and small, temporary embankment structures, that are associated only with re-mining areas, may be removed and reclaimed without restarting the two-year bond liability period under 405 KAR 16:200, Section 1(7)(b). Once the structures have been properly removed and reclaimed, the performance bond for these areas may be released after a period of time sufficient to assure that the reclaimed areas are stable and have a good vegetative cover. All other sediment structures and roads must wait two years after removal and seeding before final release of bond for those areas.

AML Reclamation Agreements

Permittees may be allowed to enter into an agreement with DNR for reclamation of AML-eligible sites adjacent to coal mining permit areas. However, DNR is not obligated to enter into any Reclamation Agreement and may choose to do so at its discretion. The following criteria must be demonstrated in order for DNR to enter into an AML Reclamation Agreement with a permittee:

The proposed reclamation area must have been determined to be AML-eligible by the DNR's Division of Abandoned Mine Lands (DAML). The proposed area must be causing off-site environmental impacts, but with little likelihood that the site could be addressed under the AML program in the foreseeable future.

The eligible reclamation site will be inventoried by the DAML and registered on the national Abandoned Mine Land Inventory System (AMLIS).

The proposed area must be identified by the DAML as priority III, or greater, in accordance with KRS 350.555 and Section 403(a) of the federal Surface Mining Control and Reclamation Act of 1977.

The DAML will prepare an estimate of the cost for DAML itself to fully reclaim the site.

If the permittee is to receive AML funds for any work at the site, he must pursue and be awarded an open bid contract for that work from the Finance and Administration Cabinet.

Prior to the occurrence of any reclamation activity on these adjacent/nearby AML-eligible areas, DNR's Division of Mine Reclamation and Enforcement will be given the opportunity to review and concur with the reclamation proposal.

The site will be recognized as an active AML project during the reclamation activity and will be subject to inspection by DAML field personnel.

The Reclamation Agreement will provide that the site will be maintained by the permittee/contractor for a period of time to be determined by the DAML.

The Reclamation Agreement will provide that if the permittee/contractor fails to honor or satisfy the terms of the Agreement the DSMRE may require him to obtain a permanent program permit for the affected area.

The difference between the estimated cost for DAML itself to fully reclaim the site (although such reclamation by DAML may not be currently planned) and the estimated cost of any supplemental reclamation that may be performed by DAML under the Reclamation Agreement, represents the potential for savings to the AML program if the site is reclaimed in accordance with the Reclamation Agreement. In any case, the reclamation performed by the permittee/contractor under the Reclamation Agreement represents environmental restoration achieved with minimal expenditure of public funds.

Alternative Effluent Limitations for Preexisting Pollutational Discharges

Mining permittees must comply with effluent limitations established under the Kentucky Pollutant Discharge Elimination System (KPDES). KPDES is derived from the federal Clean Water Act and EPA regulations and is administered in Kentucky by the Division of Water in the cabinet's. Department for Environmental Protection. Mining permittees conducting remining operations on areas affected by pollutational discharges resulting from pre-SMCRA mining may obtain a modified KPDES permit with relaxed effluent limitations for pH, iron, and manganese.

If you have any questions or comments about this RAM, or need further information concerning remining activities, please contact the Director of the Division of Mine Permits, # 2 Hudson Hollow, Frankfort, KY 40601 or call (502) 564-2320.

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