

## **Reclamation Advisory Memorandum RAM # 56**

### **Kentucky Natural Resources and Environmental Protection Cabinet Department for Surface Mining Reclamation and Enforcement**

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

**Date:** December 1, 1982

**Subject:** Overlapping Permits

#### **Purpose and Applicability**

Part I of this memorandum applies to all situations in which an applicant for a subsequent permit for surface activities (Permit B) obtains the right to mine coal and wishes to partially or totally overlap an existing permit (Permit A) for surface activities, whether expired or in effect, for which any part of the bond remains in force. Parts 2 and 3 of this memorandum apply to situations in which more than one permittee shares a common facility or permit area. This memorandum in no way addresses *transfers* of existing permits, which are covered by 405 KAR 8:010 Section 22. This memorandum also does not concern cases in which underground and surface activities are simultaneously conducted on the same area by different permittees.

For purposes of this memorandum, the prior permittee is designated "A". The subsequent applicant/permittee who overlaps all or part of Permit A is labeled "B".

#### **Part 1: Subsequent Permittee B Obtains Right to Mine and Wishes to Overlap Existing Permit A.**

##### ***Liability of Subsequent Permittee***

When Permittee B applies for a permit involving a partial or total overlap, B **and** any surety on his bond must expressly agree that B is responsible for reclamation of the **entire** permit area proposed in his permit application. Permittee B and the surety must complete the required statement of liability (see attachment) and include this with the application.

B cannot permit an overlap area for which he will not take responsibility. The department will delete from B's proposed permit all overlapped areas for which B will not assume responsibility.

Once his permit is issued, B shall be liable for and his bonds shall guarantee reclamation for all of his permit area. This includes overlapping areas which may have been previously disturbed.

B may not conduct surface coal mining operations prior to issuance of his permit.

B will not be held responsible for any notice of violation previously issued to A, but the department may require B to take certain interim remedial measures due to environmental conditions of the site. The department may require this as a condition of permit issuance.

### ***Release of Prior Permittee's Bond***

#### **(1) Interim Program Bonding**

- (a) If A has an interim permit the department will grant a ***complete*** release of A's bond if the following conditions have been met.
  - 1. B has permitted, posted bond on, and assumed liability for the overlapped area and agreed to a schedule of reclamation for disturbed areas; and
  - 2. A's bond is not the subject of forfeiture action; and
  - 3. Either (a) or (b):
    - (a) B overlaps A's permit area entirely; or
    - (b) Except for the overlap, all disturbed portions of the permit are ready for final release and A does not intend to disturb additional acreage.
- (b) If A has an interim permit the department will grant a ***partial*** release of A's bond, if the following conditions have been met:
  - 1. B has permitted, posted bond on, and assumed liability for the overlapped area and agreed to a schedule of reclamation for disturbed areas; and
  - 2. A's bond is not the subject of forfeiture; and
  - 3. Except for the overlap, all disturbed portions of A's permit are ready for grading release, as set forth in 405 KAR 1:050 Section 11, and A does not intend to disturb additional acreage.

At this time, the department will:

- 1. grant a reduction of A's bond for the acres overlapped;
- 2. grant a reduction of A's bond for non-overlapped acres which have not and will not be disturbed; and
- 3. grant a partial release of A's bond for acres disturbed but not overlapped

#### **(2) Permanent Program Bonding**

- (a) ***Single area bonding***: If A has a permanent program permit with single area bonding, the department will grant a Phase I or Phase II release of A's bond if the following conditions have been met:
  - 1. B has permitted, posted bond on, and assumed liability for the overlapped area and agreed to a schedule of reclamation for disturbed areas; and
  - 2. A's bond is not the subject of forfeiture; and
  - 3. Except for the overlap, all disturbed portions of A's permit are ready for Phase I

or Phase II release as set forth in 405 KAR 10:040 Section 2(4)(a) and (b), and A does not intend to disturb additional acreage.

At that time, the department will retain enough bond to complete reclamation.

(b) **Incremental bonding:** If A has a permanent program permit under an approved incremental bonding plan, the bond amount for any increment will be released or forfeited independently of any other increment of the permit area. The liability under the performance bond shall extend only to the increment expressly covered by the bond. Thus, if B permits an area encompassing one or more increments of an existing permit, the department will treat each increment like an area subject to single area bond. (See subsection (2)(a) above; single area bonding.)

## **Part 2: Shared Facilities (used by more than one permittee at the same time)**

If associated facilities, such as sediment ponds and access roads, are concurrently used by more than one operator, they must be permitted by all operators using the facility. Bonding of shared facilities may be handled in one of two ways:

1. All permittees must bond the shared facility; or
2. The permittees may reach an agreement and designate one permittee who is responsible for and bonds the facility. This agreement must be in writing and must be submitted to the department for placement in the permit file for each permit sharing the facility. If the designated permittee ceases to use the facility, his bond will not be released until he reclaims the area or another permittee assumes liability and bonds the area.

The provisions set forth below in "Joint Liability of Permittees" apply to shared facilities as well.

## **Part 3: Joint Liability of Permittees**

Where two permittees conduct operations on the same area pursuant to overlapping permits and a violation occurs, any notice or order will be written against the permittee causing the violation. If both permittees are responsible or if the inspector is unclear which permittee caused the violation, the notice or order will be issued to both permittees. The question of responsibility will be resolved at the hearing.

## Statement of Liability for Overlapped Areas

### STATEMENT OF LIABILITY FOR OVERLAPPED AREAS (in accordance with RAM #56)

(PERMITTEE B) acknowledges that its Application Number \_\_\_\_\_ overlaps areas already included in (PERMIT # A) held by (PERMITTEE A) .

(PERMITTEE B) expressly agrees to assume liability, immediately upon issuance of (PERMIT # B) , for reclamation of all areas included within the permit area of (PERMIT # B) , including any areas previously disturbed by (PERMITTEE A) . Reclamation of areas disturbed prior to issuance of (PERMIT # B) shall proceed according to the following schedule:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(PERMITTEE B) (and the undersigned SURETY, if applicable) expressly agree that the bond filed with Application No. \_\_\_\_\_ will guarantee reclamation of the entire permit area of (PERMIT # B) , whether disturbed in connection with (PERMIT # B) or previously disturbed in connection with (PERMIT # A) .

\_\_\_\_\_  
APPLICANT/AUTHORIZED REPRESENTATIVE  
PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SURETY REPRESENTATIVE  
PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
DATE