

Reclamation Advisory Memorandum RAM # 75

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

From: Charles Martin, Acting Commissioner

Date: March 12, 1984

Subject: Permanent Program Performance Standards Take Effect March 16, 1984 on
Transitioning Operations

Background

Kentucky obtained primacy under the 1977 federal surface mining Act on May 18, 1982. Under the federal law all ongoing operations which intended to continue operating beyond eight months after primacy (January 18, 1983) were required to apply for permanent program permits within two months after the state obtained primacy (July 19, 1982). Kentucky then would have had six months (January 18, 1983) in which to issue or deny permanent program permits for these ongoing operations, but those operations could continue to operate on their interim permits until the state could act on their permanent program applications.

Recognizing that the two-months and six-months repermitting deadlines would place an unreasonable burden on Kentucky's uniquely large mining industry and also the department, the Office of Surface Mining (OSM) allowed Kentucky to include in its program a one-year extension of the repermitting date to January 18, 1984. Under this extension, Kentucky operations were allowed to submit a short-form "transition" application by July 19, 1982, rather than the much more complex "comprehensive" application and then submit the comprehensive application by January 18, 1983. Kentucky then had until January 18, 1984, to complete the repermitting process.

In approving the one-year extension, OSM required that if the repermitting was not completed by January 18, 1984, Kentucky would have to begin giving first priority to completing the repermitting, rather than to any new applications which normally must be processed within 65 working days according to state law. In imposing this condition OSM was concerned that excessive delay in the repermitting process could allow some ongoing operations to continue under the interim program performance standards for an extended period of time, thereby avoiding the more stringent permanent program requirements for an excessive time period.

Kentucky operators submitted some 3200 transition applications by July 19, 1982, and subsequently submitted some 2700 comprehensive applications by January 18, 1983. Because of the many technical complexities which were totally new in the permanent program, the department found it necessary to allow Kentucky operators additional time to submit certain

technical and engineering information, under a priority system which insured that environmentally sensitive operations would be repermited first, insured an orderly flow of this information to the department, and helped smooth out the huge workload faced by the coal industry's engineers as a result of the permanent program.

The massive repermitting process has been orderly, and significant progress has been made. However, because of the large number and complexity of the applications for repermitting, plus a large workload from two-acre operations, revisions to ongoing interim operations, and new permanent program applications, the department was unable to complete the repermitting process by January 18, 1984.

The department requested OSM to extend the January 18, 1984, date in recognition of Kentucky's unique situation; and requested that a ban on new permits not be imposed because of the adverse impact such a ban would have on Kentucky's coal industry, just now beginning to recover from a period of severe recession.

Kentucky Program Amendment

OSM is in the process of amending Kentucky's program to extend the repermitting date from January 18, 1984 to September 15, 1984. However, Kentucky is required to process an average of 270 of the backlogged transitioning applications each month; and is required to impose the applicable permanent program performance standards on all ongoing "transitioning" operations beginning March 16, 1984. If Kentucky is unable to comply with these conditions for any reason, OSM proposes to supersede the Kentucky statutes and impose a ban on processing new permit applications until the backlog of transitioning permits is cleared.

Permanent Program Performance Standards Take Effect on March 16, 1984

By Order of the Cabinet Secretary, the permanent program performance standards will go into effect for interim permit areas of transitioning operations on March 16, 1984. However, the order provides that the department may waive any permanent program performance standard which operators cannot reasonably be expected to meet without the department having first reviewed and approved specific measures in the operators' mining and reclamation plans. Where a permanent program performance standard is waived and there is a corresponding interim program performance standard, the operator must continue to comply with the interim program performance standard in accordance with the interim permit. This action applies only to valid interim permit areas which are transitioning into the permanent program and does not apply to any new areas in the comprehensive application which are not covered by the interim permit. ***No operations may be conducted outside the boundaries of the valid interim permit area until the permanent program permit is issued.***

The attached table specifies which permanent program performance standards will be waived, so that operators and the Department's reclamation inspectors will know which interim program and permanent program performance standards will be in effect on and after March 16, 1984.

Procedures

Maps

On March 16, 1984, or as soon as possible thereafter, the Department's reclamation inspectors will mark on maps the extent of the mining at each transitioning operation. The permanent program performance standards, except for performance standards which have been waived by the Department, will then apply to all areas from which coal has not yet been removed as of March 16, 1984 and to all areas which are disturbed, redisturbed, or used to facilitate mining on and after March 16, 1984 and these areas will be included in the permanent program permit area. Where a permanent program performance standard is waived and there is a corresponding interim program performance standard, the operator must continue to comply with the interim program performance standard in accordance with the interim permit.

Areas overlying underground workings

Areas overlying underground workings were not required to be in the permit area during the interim program but are required to be permitted in the permanent program.

Therefore, for areas overlying underground workings the proposed permit boundaries as shown in the comprehensive permanent program application will be considered the actual permit boundaries unless the proposed boundaries clearly conflict with the law and regulations. Where necessary, the permit boundaries for areas overlying underground workings will be adjusted when the permanent program permit is issued.

Bond release

All operations on areas mined, disturbed, redisturbed, or used to facilitate mining on and after March 16, 1984, must comply with the applicable permanent program performance standards. However, if a transitioning interim area is completely mined out or if operations are permanently ceased prior to the issuance of the permanent program permit, then the reclamation performance bond on the permit area can be released under the criteria and procedures of the interim program. If active mining operations are continued until the permanent program permit is issued, then all areas mined, disturbed, redisturbed, or used to facilitate mining after March 16, 1984, must be included in the permanent program permit area, and such areas must be covered by the permanent program performance bond and will be subject to the 5-year bond liability period. However, it should be understood that bonds provided under the interim program are not subject to any extended or additional liability.

Additional procedural information, if needed, will be provided in future RAMS. If you have questions about this RAM, please contact your appropriate Regional Office.

Attachments (Table 1)

Table 1 – Applicable Regulatory Requirements for Transitioning Affected Areas from March 16, 1984, Until Permanent Program Issuance.

Note: All permanent and interim program regulatory references in the table may be found in Title 405 of the Kentucky Administrative Regulations (KAR).

Subject	Permanent Program	Interim Program	Requirements on Transitioning Areas Affected from March 16, 1984, Until Permanent Program Permits Issued
Definitions	7:020	1:010/3:010	Permanent program standards apply.
Applicability	7:030	1:020/3:020	Permanent program standards apply.
General Obligations	7:040	1:020/3:020	Permanent program standards apply.
General Provisions	16:010/18:010	1:020/3:020	Permanent program standards waived, except that Sections 6 and 7 apply regarding permanent abandonment and temporary cessation of operations. Otherwise, interim program standards apply.
Contemporaneous Reclamation	16:020/18:020	1:260/None	Permanent program standards apply.
Signs and Markers	16:030/18:030	1:080/3:070	Permanent program standards apply.
Casing and Sealing Holes	16:040/18:040	1:160/3:130	Permanent program standards waived. Interim Program Standards apply.
Topsoil Handling	16:050/18:050	1:100/3:080	Permanent program standards apply.
Protection of Hydrologic System	16:060/18:060	1:150/3:120, 1:160/3:130, 1:180/3:150, 1:190/3:160, 1:200/3:170	Permanent program standards apply. Effluent limitations outlined in KPDES General Permit apply, except where permittee has KPDES Individual Permit.
Water Quality Standards	16:070/18:070	1:170/3:140, 1:200/3:170	Permanent program standards apply. Effluent limitations outlined in KPDES General Permit apply, except where permittee has KPDES Individual Permit.
Diversions	16:080/18:080	1:190/3:160	Interim program standards apply. Permanent program standards waived, except that new structures not already approved in interim permit must comply with permanent program standards.

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Sediment Ponds	16:090/18:090	1:200/3:170	Interim program standards apply. Permanent program standards waived, except that new structures not previously approved in interim--permit must comply with permanent program standards.
Temporary and Permanent Impoundments	16:100/18:100	1:220/3:190	Interim program standards apply. Permanent program standards waived, except that new structures not previously approved in interim permit must comply with permanent program standards.
Surface and Groundwater Monitoring	16:110/18:110	1:170/3:140, 1:180/3:150	Permanent program standards apply. Surface water monitoring on areas affected after March 16, 1984, will be conducted according to the KPDES General Permit or KPDES Individual Permit, as appropriate.
Explosives	16:120/18:120	1:090/None	Permanent program standards apply.
Disposal of Excess Spoil	16:130/18:130	1:141/3:111	Permanent program standards apply.
Disposal of Coal Processing Waste	16:140/18:140, 7:050	1:150/3:120, 1:210/3:180, 7:050	Interim program standards apply. Permanent program standards waived, except that new structures not previously approved in interim permit must comply with permanent program standards. If problems develop on these areas the Department will prioritize review of permanent program permit.
Disposal of Waste other than Coal Processing Waste, Soil or Rock	16:150/18:150	1:150/3:120	Permanent program standards apply. If problems develop, Department will request assistance from Division of Waste Management.

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Coal Processing Waste Dams and Impoundments	16:160/18:160, 7:050	1:210/3:180, 7:050	Interim requirements apply. Permanent program standards waived» except that new structures not previously approved in interim permit must comply with permanent program standards. If problems develop on site, the Department will prioritize review of permanent program permit.
Air Resources Protection	16:170/18:170	None	Permanent program standards apply.
Fish and Wildlife Protection	16:180/18:180	None	Permanent program standards waived. No interim program standards applicable.
Backfilling and Grading	16:190/18:190	1:130/3:100	Permanent program standards apply.
Revegetation	16:200/18:200	1:110/3:080	Permanent program standards apply.
Postmining Land Use	16:210/18:220	1:110/3:080	Permanent program standards waived. Interim program standards apply.
Roads	16:220/18:230	1:120/3:090	Permanent program standards waived, except that new structures not already approved in interim permit must comply with permanent program standards.
Other Facilities	16:250/18:260	1:120/3:090	Permanent program standards apply, except Section 1(l)(a) and 2(l)(a) waived.
Subsidence	18:210	None	Permanent program standards apply. If Department detects problems on site, Department will prioritize review of permanent program permit.
Concurrent Surface and Underground Mining	20:020	1:050(10)/3:050(10)	Permanent program standards waived. Interim permit requirements apply.
Auger Mining	20:030	No separate standards	Permanent program standards waived. Interim permit requirements apply.
Prime Farmland	20:040	1:250	Permanent program standards apply.

Subject	Permanent Program	Interim Program	Requirements on Transitioning Areas Affected from March 16, 1984, Until Permanent Program Permits Issued
Mountaintop Removal	20:050	1:240	Permanent program standards apply.
Steep Slope Mining	20:060	1:230	Permanent program standards apply.
Off-Site Coal Processing and Support Facilities	20:070	No separate standards	Interim permit requirements apply. Permanent program standards waived, except water rights replacement in Section 2(16) applies.
In-Situ Processing	20:080	No separate standards	No transitioning in-situ operators.