

Reclamation Advisory Memorandum RAM # 96

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

From: C. Thomas Bennett, Commissioner

Date: August 10, 1988

Subject: Broad Form Deed

A federal court order was handed down June 20, 1988, by the United States District Court for the Eastern District of Kentucky at Frankfort, in the case of ***Akers v. Bradley***, Civil Action No. 84-88. As a result of this order the Cabinet has revised the permitting requirements for those applicants relying on the "Broad Form Deed."

In summary, this order will affect only those applicants who propose to extract coal by surface mining methods where the surface estate has been severed from the mineral estate and the instrument of severance is a ***broad form deed***.

If an applicant is proposing to mine under the above stated circumstances and chooses to rely on the broad form deed, the Division of Permits will require the submission of a notarized copy of the severance instrument (broad form deed) and a legal opinion which must be prepared by an attorney. Upon receipt of this information as a part of the permit application, the Cabinet is required by the federal order to make a bona fide, prima facie determination whether these documents can be construed under state law to authorize surface mining. The details regarding the application requirement for submission of this information are explained below.

This order relates to 405 KAR 8:030, Section 4(2) and section 7 of the application form (SMP-01-R, 11/85). To implement the order, DSMRE must require additional information under items 7.1 and 7.4. However, items 7.2 and 7.3 continue to apply as is. When the current application form is revised, section 7 will be modified to specifically request this information.

When an applicant relies upon a "broad form deed" as the basis for the legal right to enter and mine an area using surface mining methods, the following information must be submitted under items 7.1 and 7.4 of the application.

Application item 7.1

In addition to the information currently required under this item, the applicant must include the following:

1. Specifically state in the space labelled "Type of Document" that the applicant is relying upon a ***broad form deed***; and

2. Specify the identities of the grantees under the broad form deed.

Application item 7.4

When the applicant relies upon a broad form deed, a ***new option*** exists in addition to the three options currently provided in this item. This new option consists of submitting the following information as outlined below:

1. Submit a notarized copy of the original instrument which severed the surface estate from the mineral estate, and
2. Submit a legal opinion which must be prepared by an attorney. The legal opinion must, at a minimum:
 - a) provide an express opinion that the deed attached under item 7.4 and relied upon by the applicant ***is*** a broad form deed; and
 - b) specify what features the deed possesses which qualify it for characterization as a broad form deed; and
 - c) include the legal authority and demonstrate that the language of the instrument grants the right to mine coal by surface mining methods under state law.

This information must be labelled as "Attachment 7.4 A, 7.4 B," etc.

Under this new option, the application will not be deemed complete and ready for technical review (AAA) unless and until the proper supporting documentation outlined above is included in the application.

As required by the order, the Cabinet must make bona fide, prima facie determination whether the language of the legal instrument is construed under state law to authorize surface mining. This determination will be made under the supervision of the Director, Division of Permits and through consultation with appropriate Cabinet legal personnel.

If you have any questions about the procedure described in this RAM, please contact Fred Kirchhoff (ext. 664) or Mark Thompson (ext. 670) at 502/564-2320 in the Division of Permits.