



Reclamation Advisory Memorandum

From: Carl E. Campbell, Commissioner

C.E.C.

Date: May 7, 2010

Subject: Service of DMRE Documents

RAM # 146

Effective Date: June 1, 2010

Introduction

KRS 350.130 (1) presently provides for alternative methods by which Notices of Noncompliance and Orders for Cessation and Immediate Compliance may be served on the permittee, person, or operator. KRS 350.130(1) states in part that the notice or order:

[S]hall be handed to the person in charge of the operation, and the operator or person engaged in coal exploration operations or sent by certified mail, return receipt requested addressed to the permanent address shown on the application for a permit or if no address is shown on the application, then to the address known to the cabinet.

405 KAR 12:020, Section 5(2) provides that the notice or order, or inspection document, be served by hand delivery, certified mail, or registered mail, and hand-delivered at the mine site to the person in charge of the operation or if no one is in charge, to an employee or agent at the site. The Department has in the past served its notices, orders, modifications, inspections of noncompliance and mine inspection reports (collectively enforcement documents) by both hand-delivery at the mine site and by certified mail, return receipt requested. The Cabinet also sent a copy of its enforcement documents by regular mail to the company, surety, directors, and B6 Controller. In instances where the operator was cited and hand delivered the enforcement document, a copy was also mailed certified mail, return receipt requested to the operator.

After examining current procedures, the Department has determined that service solely by hand-delivery at the mine site, where possible, would substantially comply with KRS 350.130 (1) and 405 KAR 12:020, Section 5(2), and would eliminate redundant service of enforcement and inspection documents, thereby minimizing expenses for certified mail.

The Energy and Environment Cabinet does not discriminate on the basis of race, color, national origin, sex, age, religion, or disability and provides, on request, reasonable accommodations including auxiliary aids and services necessary to afford an individual with a disability an equal opportunity to participate in all services, programs, and activities. To request this publication in an alternative format, contact: Office of the Commissioner, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321.

(502) 564-6940 FAX (502) 564-5698 e-mail: Carl.Campbell@ky.gov

TTY (502) 564-0183 (text telephone for the deaf, hard of hearing, or speech-impaired)

Therefore, the Department is implementing the following procedures:

Procedures

- Upon the effective date of this RAM, the Division of Mine Reclamation and Enforcement (DMRE) will continue to hand-deliver its enforcement documents to the individual who, based upon reasonable inquiry by the Cabinet's authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the document. If no such individual can be located at the site, a copy of the document will be tendered to an individual at the site who appears to be an employee or agent of the person to whom it has been issued. Consistent with past policy, the Department will continue to send a copy of the enforcement documents to the company / permittee and surety by regular mail. However, the Department will no longer send a copy of the enforcement documents to the registered agent, directors / owners of the company or the B6 Controller.
- In cases where a copy of the enforcement document has been hand delivered to a representative of the operator, the Department will mail a copy of the enforcement document to the permittee, certified mail, return receipt requested.
- If, and only if, hand-delivery cannot be made as outlined above, the Department will send the document by certified mail, return receipt requested: (a) to the person to whom it has been issued and addressed to the permanent address shown on the application for a permit, or if no address is shown on the application, then to the address known to the Cabinet; or (b) to the person's designated agent for service.
- As provided in 405 KAR 12:020, Section 5 (2), service, by either hand or mail shall upon tender, be complete and service shall not be deemed incomplete because of refusal to accept.

This RAM will also serve to notify you that the General Assembly has recently enacted HB 215 which will allow the Cabinet to send enforcement documents by electronic mail to an email address, "voluntarily provided to the Cabinet by the permittee on a form prepared by the Cabinet." The amendment further provides that email service is only effective "upon delivery of the notice or the order to the recipient's inbox by electronic mail as electronically communicated to the Cabinet by an electronic registered receipt." This legislation will become effective on or about July 15, 2010.

This amendment was strongly supported by the coal industry because many of the industry representatives recognized that electronic transmission of documents would decrease

transmission time, would allow for electronic storage of documents, and would benefit tax payers and the environment by reducing paper usage. We strongly encourage all coal companies to take advantage of the opportunity to receive all DMRE documents electronically.

If you wish to receive the DMRE's documents, including enforcement documents, by email, you must submit a SME-101 form (Delivery of Documents by Email) to the Division of Mine Permits, Attention: Supervisor, Ownership and Control Section. A copy of this form is attached to this RAM. The enrollment form is also available on the Division's website at <http://www.minepermits.ky.gov/electronicforms/>. The form must be signed by an authorized agent of the Permittee. As required by RAM 100, the Department must be notified in writing of any change in email address

This enrollment provision is applicable even to those companies or permittees who had previously submitted a request to receive the Mine Inspection Reports by email. If you fail to resubmit this form, the Cabinet will no longer send you any documents by email.

If you do not sign up for this email service, DMRE will continue to send documents to you via the U.S. Postal Service in conformity with this RAM.

If you have questions about the issues discussed in this RAM, please contact the Director of the Division of Mine Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky, 40601, or call (502) 564-2340.

For the permittees who elect to receive their documents by email, service of documents by email will begin on August 1, 2010.

Attachment: SME-101 Form

**Department for Natural Resources
Division of Mine Reclamation and Enforcement
Delivery of Documents by Email**

Submittal of this SME-101 form will allow inspection documents, enforcement documents and all other documents not herein named to be delivered to the permittee by email. PLEASE PRINT LEGIBLY

Permittee Name / Company Name

Permit Number

Permittee Address / Company Address and Zip Code

Company Email Address

DSMRE ID

Printed Name and Title of Authorized Company Representative

Signature of Authorized Company Representative

Date

NOTE: If the signer is other than the president or secretary of a corporation, attach a notarized copy of power of attorney, or resolution of the board of directors which grants the legal authority to represent the applicant in this notification. (This does not apply to a single proprietorship or partnership.)

THIS FORM CANNOT BE SUBMITTED TO THE DIVISION OF PERMITS FTP SITE!

*****Please return the completed form to : Supervisor, Ownership and Control Section, Division of Mine Permits, # 2 Hudson Hollow, Frankfort, Kentucky 40601 or call (502) 564-2320.**