

program is consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT:

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I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21426). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Required Amendment

On December 31, 1990, we published in the **Federal Register** (55 FR 53490) a requirement that Kentucky amend its program to require that public notice shall not be initiated until the Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) has determined that a permit application is administratively complete. Kentucky was required to respond by January 30, 1991, but by letter of February 1, 1991, requested an extension to February 28, 1991. We granted that extension by letter of February 22, 1991. On March 4, 1991, Kentucky responded by letter indicating that the existing regulation at 405 Kentucky Administrative Regulations (KAR) 8:010 is as effective as the Federal regulations. Kentucky's response reminded OSM that the initial

program approval of May 18, 1982, considered these public notice differences and deemed them to be no less effective than the Federal regulations. No action was taken on the letter. We announced our intent to reconsider this required amendment when we published a proposed rule notice in the June 6, 2002, **Federal Register** (67 FR 38917), and in the same document we invited public comment on the proposed action during a public comment period that closed on July 5, 2002.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

Our order that Kentucky amend its program was based on a regulation change made by us in 1983 that added the concept of an "administratively complete application" that starts the public notification process at 30 CFR 773.13(a)(1), later renumbered 30 CFR 773.6(a). As discussed below, the applicant could not begin the public notification process until the regulatory authority notified the applicant that the permit application was administratively complete. Our concern with the Kentucky program at the time, was that it appeared that if the permit application was determined *not* to be administratively complete after the notification process began, Kentucky did not have a provision that restarted the notification process once the permit application was determined to be administratively complete by Kentucky.

Kentucky's initial response to our order to amend its program stated that we had approved the provision, later found to be deficient in 1990, in 1982. However, the issue considered in the initial program approval in 1982 was different than the issue addressed in the required amendment since the required amendment was the result of a change in the Federal regulations in 1983.

The issue considered in the May 18, 1982, conditional approval is discussed in Finding 14.15 (47 FR 21415). That finding relates directly to an earlier finding, 14.27, regarding the review of Kentucky's initial program submittal published on October 22, 1980 (45 FR 69956). Finding 14.27 reads as follows: 405 KAR 8:010E Section 8(8) is less stringent than 30 CFR 786.11(d) concerning public notice of filing permit applications. The State regulation does not specify when the applicant must file a copy of the application in a local public office for public inspection; while the Federal regulation requires the filing by the first newspaper

publication date. The newspaper publication would be meaningless if the application were not on file and available for public review at the same time.

As this finding indicates, the primary issue was when a copy of the submitted permit application would be made available for public review. When we conditionally approved the Kentucky program on May 18, 1982, we stated in finding 14.15 that Kentucky's explanation of its process persuaded us that Kentucky's program was no less effective than the Federal regulations.

The 1990 required amendment, on the other hand, resulted from a change in the Federal regulations that was made on September 28, 1983, when the concept of "administratively complete application" was added to the Federal definitions at 30 CFR 701.5 and applied at 30 CFR 773.13(a)(1) and later renumbered to the current 30 CFR 773.6(a), which provides for public notification of an administratively complete permit application.

Although Section 513(a) of SMCRA requires "At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks", we believed that to achieve consistency among the various State and Federal regulatory programs the initial regulations adopted to implement this provision needed to be revised. The revision of the definition of a "complete permit application" to an "administratively complete application" was discussed in the 1983 preamble. There, we stated that:

Under previous 30 CFR 786.11(a), applicants were required to place newspaper advertisements upon the filing of complete permit applications. In practice, however, the previous rule was not strictly applied and the comment period was not started anew each time additional information was submitted to the regulatory authority following the filing of an application. The final definition of an "administratively complete application" recognizes these practical realities, while ensuring that each regulatory requirement is addressed in sufficient detail initially to provide meaningful regulatory authority and public review of the applications."

[48 FR 44349, September 28, 1983]. Thus, the 1983 regulatory changes recognize that the public notification process does not restart every time a change is made to a permit application.

We believe the intent of notifying the public that a permit application has been submitted is to alert it to the right to comment on the application. The deadline for submitting those comments