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**ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR NATURAL RESOURCES**

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May 18, 2020

Mike Castle, Director  
Lexington Field Office  
Office of Surface Mining Reclamation and Enforcement  
2675 Regency Road  
Lexington, KY 40503

Subject: Proposed Program Amendment Related to Regulatory Cleanup.

The Department for Natural Resources submits the attached administrative regulations as a proposed amendment to our approved permanent regulatory program. The administrative regulations were promulgated to correct citations and cleanup language related to the repeal of the Department's interim program administrative regulations. These amendments were approved by the Kentucky Legislative Research Commission and became effective on May 5, 2020.

The Legislative Research Commission made suggested amendments to the administrative regulations, which are not intended to change the meaning of the administrative regulations but rather clarify content or are made simply to make the administrative regulations comply with KRS 13A drafting requirements. KRS Chapter 350 directs the Cabinet to establish administrative regulations that are as effective as, but not more stringent than, those required under SMCRA and its implementing regulations and these amendments comply with that directive.

Sincerely,

A handwritten signature in blue ink that reads "Gordon Slone".

Gordon Slone,  
Commissioner

GS/mm

VOLUME 46, NUMBER 8– FEBRUARY 1, 2020

Section 8. The grade "Kentucky Pride" shall apply to hay in which the test analysis for crude protein exceeds fourteen (14) percent on a dry matter basis and the test analysis for relative feed value exceeds 124 and the physical description indicates no visible injurious foreign material.

Section 9. The grade "Kentucky Feeder" shall apply to hay in which the test analysis for crude protein is between eight (8) percent and fourteen (14) percent or the test analysis for relative feed value is between seventy-five (75) and 124 and the physical description includes no visible injurious foreign material.

Section 10. No grade shall be applied to hay that is not graded as "Triple Crown" or "Kentucky Pride" or "Kentucky Feeder."

Section 11. All hay testing laboratories used in the Kentucky Standard Hay Grading Program may annually run a series of samples which will then be analyzed by wet chemistry by the University of Kentucky, College of Agriculture, Department of Agronomy to insure consistent readings for Kentucky forages.

Section 12. All persons who take samples of hay for testing under the Kentucky Standard Hay Grading Program shall be certified by the department and shall receive a certification card issued by the department after having successfully completed the following:

(1) The taking of samples from ten (10) lots of hay according to the procedures outlined by the National Hay Association in its publication at page 9, "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986."

(2) At least forty (40) hours of instruction, from the director of the department's Hay and Grain Division or a person who has been certified to sample, on properly recognizing the physical characteristics (color, mold, foreign material, type, stage of maturity) of hay.

Section 13. Upon application to the department, individuals who want to take samples of hay on behalf of hay growers' associations and cooperatives may be certified by the department and issued a certification card.

Section 14. The department may allow laboratories that are certified by the National Hay Association to test hay under the guidelines of the Kentucky Standard Hay Grading Program.

Section 15. The director of the department's Hay and Grain Division or the Commissioner of Agriculture may revoke certification of samplers and laboratories which do not follow the sampling and testing procedures of the Kentucky Standard Hay Grading Program. Certification may be revoked for failure to follow the procedures and requirements outlined in this administrative regulation, provided that the certification holder is given ten (10) days written notice of the reason for revocation.

Section 16. Any party aggrieved by a notice of revocation of certification may appeal the department's decision to revoke the certification by filing an appeal with the Department of Agriculture, Division of Hay and Grain, within ten (10) days of the date of notification of revocation.

(1) There will be a hearing committee available within the Division of Hay and Grain at all times to hear complaints by aggrieved parties and to decide whether to revoke a certification for violation of procedures or requirements set forth in the administrative regulations.

(2) The hearing committee will hear each appeal and rule upon each cause for revocation.

Section 17. Hay that is sampled and tested shall be stored in the Commonwealth of Kentucky.

(1) Hay that is sampled and tested shall have recorded by the department the date of cutting and the date of sampling.

(2) Hay that is sampled and tested shall be grouped in a lot

that does not exceed a weight of fifty (50) tons.

(3) Upon application by a producer, a second test on a "lot" of hay shall be performed under the following guidelines: A certified sampler who did not take the first sample from the lot of hay shall take the second sample from at least the bales that were previously sampled and tagged or marked with colored chalk.

Section 18. Within ten (10) working days after a sample is taken, the department or any laboratory certified by the department to test hay shall mail to the producer an analysis report containing the test results, an identification of the hay's producer and type of hay and its location and the date the hay was tested.

(1) The most recent analysis report on a lot of hay shall be the report of record.

(2) The department or any laboratory certified by the department to test hay shall keep for a period of one (1) year, records of the analysis report for each lot of hay tested.

Section 19. If hay meets the requirements for the grades of "Triple Crown", "Kentucky Pride," or "Kentucky Feeder", the department or any laboratory certified by the department to test hay shall affix a label to the analysis report indicating that the hay is graded as such.

Section 20. Individuals who are certified to take samples of hay for testing under the Kentucky Standard Hay Grading Program shall collect a fee of ten (10) dollars for each lot of hay sampled and tested at the time the hay is sampled for testing. The ten (10) dollar fee shall be refunded to the producer if the hay is not tested within ten (10) working days after the hay is sampled.]

Section 4. Testing Fee. The testing fee shall be ten (10) dollars per sample. The fee shall accompany Forage Sample Analysis Request Form and be submitted with the sample.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Principles for Proper Hay Sampling", July 2019;

(b) "Forage Analyses Procedures", July 1993; and

(c) "Forage Sample Analysis Request Form", August 2019.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Forage Testing Program, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

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**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Reclamation and Enforcement  
(As Amended at ARRS, January 13, 2020)**

**405 KAR 5:002. Definitions for 405 KAR Chapter 5.**

RELATES TO: KRS 350.010(2), 350.240, 350.300  
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 requires[authorizes] the Energy and Environment[Environmental and Public Protection] Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate

reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes definitions of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.

(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.

(3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas, and processing plants.

(5) "Backfill" means excavated overburden material used to regrade a mined area.

(6) "Cabinet" is defined in KRS 350.010(10).

(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce runoff velocity for deterring erosion.

(8) "Clay" means a natural substance or soft rock which, when finely ground and mixed with water, forms a pasty, moldable mass that preserves its shape when air dried; the particles soften and coalesce upon being highly heated and form a stony mass upon cooling.

(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.

(10) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or legumes, and includes: row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to, or an integral part of, these operations is also included for purposes of this land use category.

(11) "Department" means the Kentucky Department for Natural Resources.

(12) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released, and processing plant and stockpile areas have been moved.

(13) "Diversion ditch" means a channel constructed to direct water from one location to another.

(14) "Division" means the Division of Mine Reclamation and Enforcement [Field Services of the Kentucky Department for Natural Resources].

(15) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, CaMg (CO<sub>3</sub>)<sub>2</sub>. Many limestones contain small amounts of dolomite; however, the term dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.

(16) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.

(17) ***"Edge" means the area where two (2) habitats meet.***

(18) "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two (2) or more different habitat types occurring in close proximity to each other. ~~[Where two (2) habitats meet is referred to as an "edge".]~~

(19)/(18) "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(20)/(19) "Ephemeral stream" means a stream which only flows in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and ~~that~~ [which] has a channel bottom that is always above the local water table.

(21)/(20) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(22)/(21) "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: woodlots or forested areas, shrub scrub areas, grass legume or open areas, and wetland or open water areas arranged in a manner as to promote edge effect for wildlife.

(23)/(22) "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.

(24)/(23) "Fluorspar" means an ore of the mineral Fluorite CaF<sub>2</sub>. ~~[This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.]~~

(25)/(24) "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees.

(26)/(25) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(27)/(26) "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate.

(28)/(27) "Ground cover" means the area of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(29)/(28) "Ground water" means water which is:

(a) In the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface; ***and***

(b) ~~It is~~ Differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.

(30)/(29) "Growing season" means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(31)/(30) "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.

(32)/(31) "Hollowfill" means a fill structure placed in a hollow where the side slopes of the existing hollow, measured at the steepest point, are greater than twenty (20) degrees or the average slope of the profile of the hollow, from the toe of the fill to the top of the fill, is greater than ten (10) degrees.

(33)/(32) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of KRS Chapters 350 through 353 [or 405 KAR Chapters 1 through 30]; which ***[condition, practice, or violation]*** could reasonably be expected to cause substantial, physical harm to persons outside the permit

area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure~~[not expose himself]~~ to the danger during the time necessary for the abatement.

**(34)/(33)** "Impoundment" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

**(35)/(34)** "Industrial/commercial land use" means lands used for:

(a) 1. The extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products;

2. ~~land~~ Heavy and light manufacturing facilities; or

3.~~1.~~ Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation ~~[is also included]~~; or

(b) 1. The retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments; or

2.~~1.~~ Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation ~~[is also included]~~.

**(36)/(35)** "Intermittent stream" means a stream or reach of stream that:

(a) ~~[A stream, or reach of stream, that]~~ Drains a watershed of one (1) square mile or more but does not flow continuously throughout the calendar year; or

(b) ~~[A stream, or reach of stream, that]~~ Is below the local water table for at least some part of the year, and obtains its flow from both surface water and ground water discharge. This term does not include ephemeral streams.

**(37)/(36)** "Land use" means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

**(38)/(37)** "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral calcite CaCO<sub>3</sub>. However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly calcite or dolomite, but may contain small amounts of iron-carbonates (siderite).

**(39)/(38)** "Mast" means nuts, acorns, and fruit produced by certain woody plant species.

**(40)/(39)** "Mineral operation" means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this title. This term does not include coal mining or oil shale mining.

**(41)/(40)** "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

**(42)/(41)** "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

**(43)/(42)** "Natural drainways" means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

**(44)/(43)** "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of mineral operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, ~~[but not limited to,]~~ areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

**(45)/(44)** "Noxious plants" means species that have been included on state and federal lists of noxious plants.

**(46)/(45)** "Outslope" means the face of the spoil, natural

ground, or embankment sloping downward from the highest elevation to the lowest elevation.

**(47)/(46)** "Outstanding resource waters" means surface waters designated by the cabinet, pursuant to 401 KAR 10:031[401 KAR 5:031, Section 7].

**(48)/(47)** "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to, or an integral part of, these operations is also included.

**(49)/(48)** "Perennial stream" means a stream, or stream reach, that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

**(50)/(49)** "Permanent impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dugout, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

**(51)/(50)** "Permit" means written approval issued by the cabinet to conduct mineral operations.

**(52)/(51)** "Permit area" means the area of land and water within boundaries designated in the approved permit application, ~~that includes~~~~[which shall include, at a minimum,]~~ all areas which are or will be affected by mineral operations under that permit.

**(53)/(52)** "pH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

**(54)/(53)** "PLS" means pure live seed.

**(55)/(54)** "Point source" is defined in 401 KAR 5:050.

**(56)/(55)** "Recreation land use" means land used for public or private leisure time use, including developed recreation facilities ~~including~~ ~~[such as]~~, parks, camps, and amusement areas, as well as areas for less intensive uses ~~including~~ ~~[such as]~~, hiking, canoeing, and other undeveloped recreational uses.

**(57)/(56)** "Residential land use" means tracts employed for single and multifamily housing, mobile home parks, and other residential lodgings. Also included, is land used for support facilities such as, vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

**(58)/(57)** "Roads"

(a) Means haul roads and access roads constructed, used, reconstructed, improved, or maintained ~~[for use in mining and stockpiling finished products,]~~ within permit boundaries.

(b) ~~Does not mean~~ ~~[The term excludes]~~ any roadways located in the mining pit area.

**(59)/(58)** "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

**(60)/(59)** "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by engineering practices.

**(61)/(60)** "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

**(62)/(61)** "Sediment" means undissolved organic and inorganic material transported or deposited by water.

**(63)/(62)** "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

**(64)/(63)** "Significant, imminent environmental harm to land, air, or water resources" means and environmental harm that:

(a) Has an adverse impact on land, air, or water resources, including plant and animal life;

(b) Is imminent because a condition, practice, or violation exists, which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any

time before the end of the reasonable abatement time; and

(c) Is significant because the harm is:

1. Appreciable; and

2. Not immediately reparable.[a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including,] [but not limited to,] [plant and animal life.

(b) An environmental harm is imminent if a condition, practice, or violation exists which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.

(c) An environmental harm is significant, if that harm is appreciable, and not immediately reparable.]

(65)/(64)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance. It may also be expressed as a percent or in degrees.

(66)/(65)] "Soil horizons" means contrasting layers of soil parallel, or nearly parallel to, the land surface and that:

(a) Are differentiated on the basis of field characteristics and laboratory data; and

(b) Include the following four (4) master soil horizons:

1. "A horizon" or "surface soil," which consists of the uppermost mineral layer of soil where the:

a. Organic matter is most abundant; and

b. Leaching of soluble or suspended particles is typically the greatest;

2. "E horizon," which is the layer commonly near the surface below the A horizon and above the B horizon and is most commonly differentiated from the:

a. A horizon by a lighter color and, in general measurably less organic matter.

b. B horizon in the same sequence by color of higher value or lower chroma, by a coarser texture, or by a combination of these properties;

3. "B horizon" or "subsoil," which is the middle layer immediately below the E horizon and commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

4. "C horizon," which is the deepest layer of the soil profile and consists of loose material or weathered rock that is relatively unaffected by biological activity. [Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon". The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is then most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon". The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most commonly differentiated from the overlying A horizon by a lighter color and generally measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon". The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.]

(67)/(66)] "Spoil" means overburden which has been removed during mineral operations.

(68)/(67)] "Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, riprapping, or by vegetation.

(69)/(68)] "Stream buffer zone" means an area of forest or field left untouched and undisturbed by the mineral operator during

mining, including haul road construction.

(70)/(69)] "Strip mining" is defined in KRS 350.010(2).

(71)/(70)] "Surface disturbance of dredging river or creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(72)/(71)] "Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including, hoist and ventilating ducts, areas used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

(73)/(72)] "Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger, are not considered to be surface waters of the commonwealth.

(74)/(73)] "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(75)/(74)] "Tar sand or rock asphalt" means a porous, consolidated or unconsolidated sand or sandstone whose interstices contain asphalt or bitumen.

(76)/(75)] "Temporary mineral operation" means a mineral operation that operates for a total of six (6) months or less at a location.

(77)/(76)] "Topsoil" means the A and E horizon layers of the four (4) master soil horizons.

(78)/(77)] "Toxic forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(79)/(78)] "Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurried, or otherwise transported from the processing facilities or preparation plants of any kind.

(80)/(79)] "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(81)/(80)] "Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(82)/(81)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substance that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(83)/(82)] "Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS 146.241.

approved for filing.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Reclamation and Enforcement  
(As Amended at ARRS, January 13, 2020)

405 KAR 5:032. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300  
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 ~~requires~~**authorizes** the Energy and Environment Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation specifies information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation shall pertain to a person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements.

(a) A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas, including location of access roads, spoil or waste areas, and sedimentation ponds.

(b) Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with the applicant or the applicant's designated representatives~~[appropriate persons including appropriate representatives of the applicant]~~.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Natural Resources, Division of Mine Reclamation and Enforcement, Noncoal Review Branch, 300 Sower Boulevard, Frankfort, Kentucky 40601, or at one (1) of the following regional offices:

(a)~~[London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9011;~~

(b)] Madisonville Regional Office, 625 Hospital Drive, Madisonville, Kentucky 42431-1683;

(b)]~~(e)]~~ Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1229;

(c)]~~(d)]~~ Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9331; or

(d) Hazard Regional Office, 556 Village Lane, P.O. Box 851, Hazard, Kentucky 41702]~~(e) Prestonsburg Regional Office, 3140 South Lake Drive, Suite 6, Prestonsburg, Kentucky 41653-1410].~~

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including phone number;

(b) The registered agent for service of process, if applicable, including phone number;

(c) Owners, partners, or if a corporation, officers or stockholders owning ten (10) percent or more stock;

(d) The project engineer, along with registration number and name of associated firm;

(e) The company and engineer to which correspondence concerning the subject permit shall be addressed;

(f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;

(g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and

(h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, the applicant shall list the names.

(3) The legal structure of the applicant shall be specified.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, the applicant shall specify the county and state where the name is registered.

(5) The applicant shall list previous Kentucky permits held by the applicant or an individual, partnership, or corporation associated with the applicant.

(6) The applicant shall provide the name of the contact person at the site, including phone number.

(7) The applicant shall specify the type of application, along with the permit number.

Section 3. Bond Information. (1) If bond is required pursuant to 405 KAR 5:082, the following information shall be provided in the permit application:

(a) The bond amount per acre;

(b) The total amount of bond; and

(c) The bond type.

(2) If a surety is used, the applicant shall provide the bond number and surety.

(3) If a certificate of deposit is used, the applicant shall provide the bank name and CD number.

(4) If a letter of credit is used, the applicant shall provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the owner, acknowledging approval of the activity.

(2) Except where mine access roads or haul roads join the right-of-way, if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and required approvals from the appropriate agency or local government with jurisdiction over the road.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee shall not have continuing maintenance responsibility after permit release shall be required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the commonwealth, the applicant shall obtain ~~[the appropriate]~~ permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit,

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pursuant to 401 KAR 4:010, shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, the applicant shall state this in the application to the Division of Mine Reclamation and Enforcement.

(8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6) shall be required.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine including the effective date of the source document of the legal right to mine, ~~along with the appropriate date.~~

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representations, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the relevant~~appropriate~~ United States Geological Survey Topographical Map or an equivalent format which shall:

(1) Delineate the proposed permit area and areas, if applicable, overlying proposed underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet of the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners;

(5) Delineate all proposed access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 10:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as;

(a), Parks, Wildlife Management Areas, and nature preserves; and

(b), ~~and~~ Utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary;

(8) Locate sites listed on the National Register of Historic Places and known archaeological sites;

(9) Delineate wetlands that may be affected by the proposed mineral operation;

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation;

(11) Show proposed pit area, sediment structures, storage areas, and other facilities and features related to the mineral operation;

(12) Provide a north point arrow;

(13) Contain a legend, which shall:

(a) Provide the company name;

(b) Provide the application number;

(c) Provide the county and quadrangle names;

(d) Provide the site coordinates;

(e) Provide the site address;

(f) Provide the map scale and contour interval;

(g) Provide a description of the site location including:

1. The nearest stream; and

2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operation features and facilities, including ~~f,~~ pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected; and

(j) Specify the deposit to be mined; and

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, licensed~~registered~~ pursuant to the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer's registration number; and

(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:

(a) Latitude and longitude;

(b) The nearest community;

(c) The name of the nearest stream;

(d) The nearest public road intersection; and

(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur;

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance;

(3) Specification of the mineral to be extracted;

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation;

(5) Specification if active discharges exist that may affect the proposed mineral operation. If so, provide the following information:

(a) The pH of the discharge; and

(b) The source of the discharge;

(6) Specification if underground workings will be encountered, and the distance, in feet, to the nearest active deep mine; and

(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural Resource Information. The applicant shall specify if sites listed on the National Register of Historic Places or known archaeological sites exist within, or adjacent to, the proposed permit boundary.

Section 11. Environmental Resources Information. (1) The applicant shall indicate if there are Wildlife Management Areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them on the map.

(2) The applicant shall indicate if disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(3) The applicant shall indicate if there are outstanding resource waters, pursuant to 401 KAR 10:031, within the vicinity of the proposed mineral operation. If so, the applicant shall delineate these waters on the map.

Section 12. Surface Water Quantity and Quality Protection Plan. The permit application shall contain a surface water quantity and quality protection plan, which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 405 KAR 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings, and specifications for each structure to include:

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- (a) The structure number;
- (b) The number of acres to be disturbed within the drainage area;
- (c) The number of acres in the drainage area;
- (d) Sediment storage capacity;
- (e) Storage capacity at the principal spillway;
- (f) Storage capacity at the emergency spillway;
- (g) Spillway capacities;
- (h) Structure height measured from the downstream toe; and
- (i) All other engineering designs, dimensions, and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment shall be removed and disposed.

(3) The applicant shall state if any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment that demonstrates compliance with 405 KAR 5:055.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate ~~[to the satisfaction of the cabinet,]~~ compliance with the requirements of 405 KAR 5:062.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials that shall demonstrate ~~[to the satisfaction of the cabinet,]~~ compliance with the requirements of 405 KAR 5:062.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate ~~[to the satisfaction of the cabinet,]~~ compliance with the requirements of 405 KAR 5:062.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate ~~[to the satisfaction of the cabinet,]~~ compliance with the requirements of 405 KAR 5:062.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:

- (a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary;
  - (b) Specifies the intended postmining land use for the proposed permit area; and
  - (c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.
- (2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:002.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan ~~[that/which]~~ shall demonstrate ~~[to the satisfaction of the cabinet,]~~ compliance with the requirements of 405 KAR 5:070, and is consistent with 405 KAR 5:065 and that

provides the following information:

(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium;

(2) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre);

(3) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre); and

(4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by ~~the~~~~[appropriate]~~ descriptions, designs, diagrams, figures, and calculations ~~[as]~~ necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate ~~[to the satisfaction of the cabinet,]~~ compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky ~~[registered]~~ professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) An applicant for a new permit required pursuant to KRS Chapter 350, shall publish at least once, a public notice of the application for that permit.

(a) The publication shall be made by advertisement in the newspaper of largest bona fide circulation~~[,]~~ in the county where the proposed mining site is located.

(b) If the proposed mining site is in more than one (1) county, publication shall be required in the newspaper of largest bona fide circulation in each county.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled~~[,]~~ "Notice of Intention to Mine Noncoal Minerals"~~[, and may be in a manner and form prescribed by the department]~~ and shall include at a minimum the following:

- (a) Name and address of the applicant;
- (b) Permit application number;
- (c) The location of the proposed mining site; and
- (d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mineral operations.

(4) The applicant for a new permit required by KRS Chapter 350 shall establish the date and place that the "Notice of Intention to Mine Noncoal Minerals" was published, by attaching to the application proof of the time, place, and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained if the mineral permittee desires to modify the mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

(1) The application for revision shall be filed with the cabinet and approved prior to the date on which the mineral permittee expects to revise the mineral operation;

(2) The term of a permit shall remain unchanged by a revision; and

(3) The application for revision shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral



operations under the permit. Applications for amendment may be filed at any time during the term of the permit. (1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit pursuant to this administrative regulation.

(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:082, for each additional acre or fraction of an acre.

Section 24. Permit Renewals. A valid permit issued pursuant to 405 KAR Chapter 5 shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit. (1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized pursuant to the existing permit, the portion of the application that addresses a new land area shall be subject to all requirements of 405 KAR Chapter 5, and a new original permit application shall be required for these areas.

(3) The permit renewal shall be issued if the following requirements are met:

(a) The application for renewal shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2;

(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including at a minimum:

1. An updated operational plan current to the date of request for renewal; and

2. Specification of the status and extent of all mineral operations on the existing permit area;

(c) The present mineral operation is in compliance with KRS Chapter 350 and 405 KAR Chapter 5; and

(d) The mineral permittee shall provide additional bond required in accordance with 405 KAR 5:082.

Section 25. Permit Succession. (1) There shall not be succession on the permitted area without the prior written approval of the cabinet ***in accordance with this section.***

(2) The initial mineral permittee shall notify the cabinet, in writing, of a proposed succession.

(3) The cabinet may release the first mineral operator from reclamation responsibility pursuant to 405 KAR Chapter 5 as to that particular mineral operation, except that:

(a) There shall not be release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of 405 KAR Chapter 5; and

(b) The successor shall immediately assume, as a part of his obligation pursuant to 405 KAR Chapter 5, all liability for the reclamation of the area affected by the former permitted mineral operation.

(4) If the cabinet has given its prior written approval to the succession, a successor in interest to a mineral permittee who applies for a successor permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(5) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

(a) To technically withdraw the permit application;

(b) To deny the permit application; or

(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall state the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet, the mineral permittee ***[he or she]*** may, by written notice, request a hearing by the cabinet, pursuant to 400 KAR 1:120.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. An application for a permit and mineral operation shall not be approved unless the application affirmatively demonstrates and the cabinet determines on the basis of information stated in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that the applicant has complied with all requirements of 405 KAR Chapter 5;

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5;

(3) The proposed mineral operation shall not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property, or to members of the public or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation that constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation;

(4) The proposed mineral operation shall not adversely affect natural hazard lands or a wild river established pursuant to KRS Chapter 146;

(5) The proposed mineral operation shall not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area; and

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of a public park, public building, school, church, community, or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of a public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made ***[i]*** by the cabinet ***[i]*** that the interest of the public and the landowners affected thereby shall be protected;

(e) Not within the distances specified in Section 5 of this administrative regulation, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an

allowance, as required by Section 5 of this administrative regulation.

1. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver.

2.a. A waiver obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased.

b. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 382.110 or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required pursuant to Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates ~~[to the satisfaction of the cabinet]~~ that the authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation shall be conducted in compliance with KRS Chapter 350 and 405 KAR Chapter 5.

(2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and 405 KAR Chapter 5 and conditions of the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters ~~[1, 3, and]~~ 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for a mineral operation or a surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless:

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum in accordance with the estimate prepared by~~[determined by the cabinet after]~~ the Division of Abandoned Mine Lands ~~[has prepared an estimate]~~ of the cost to reclaim the lands, based upon site specific conditions.

(4) If the applicant, mineral operator, a subcontractor, or a person acting on behalf of the applicant has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied. A mineral permittee shall not be relieved of responsibility with respect to a permit issued to him.

(5) If the cabinet determines that an activity of the applicant regulated pursuant to 405 KAR Chapter 5 is currently in violation of KRS Chapters 149, 151, 224, 350 through ~~353~~<sup>[354]</sup>, 400 KAR Chapters 1 through 3, 401 KAR Chapters 4 through 100, 402 KAR Chapter 3, or 405 KAR Chapters ~~2~~<sup>[4]</sup> through 30, then the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof that can be substantiated by the cabinet that the violation has been corrected~~[,]~~ or is in the process of being corrected in good faith; or

(b) Establish, by proof that can be substantiated by the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(6) If the applicant submits the proof specified pursuant to subsection (5) of this section, then the cabinet may issue the permit with ~~a~~<sup>[an appropriate]</sup> condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with a condition shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination pursuant to this section, then he or she has the right to request an administrative hearing pursuant to 400 KAR 1:120.

Section 30. Permit Conference and Public Comment. (1) Procedures for requests. A person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state, or local government agency or authority, may request that the cabinet hold an informal conference on an application for a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference; and

(b) Be filed with the cabinet within fifteen (15) days of the newspaper advertisement.

(2)(a) The conference shall be held at the Division of Mine Reclamation and Enforcement.

(b) The conference shall be held within fifteen (15) days of the date of the request. The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(c) The conference shall be conducted by a representative of the cabinet who shall accept oral or written statements and other relevant information from a party to the conference.

(d) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(e) All comments and evidence shall be taken into consideration by the Division of Mine Reclamation and Enforcement in Frankfort before a final decision is made on the disposition of the application.

(f) The record shall be maintained and shall be accessible to the parties during the life of the mineral operation.

(3) A person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of a federal, state, or local government agency or authority, may submit written comments to the cabinet.

Section 31. Existing Mineral Operations. (1)~~[Existing mineral operations that were not permitted or regulated prior to February 1995 shall obtain a permit within 180 days of February 1995.~~

(2) The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation if an existing disturbance within those limits was made prior to February 1995 by an existing mineral operation that was not permitted or regulated prior to February 1995. These variances shall only be granted if practical and reasonable remedial compliance measures cannot be identified.

~~(2)~~<sup>(3)</sup> The distance limitations of Section 27(6) of this administrative regulation shall not apply if lesser distance limitations have been approved in a valid permit issued prior to February 1995. The distance limitations established in those permits shall continue to apply.

Section 32. Incorporation by Reference. (1) "Application for Surface Disturbance Mining Permit Noncoal Mining, NCR-2", July 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural

Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Reclamation and Enforcement  
(As Amended at ARRS, January 13, 2020)**

**405 KAR 7:040. General obligations of operators and permittees.**

RELATES TO: KRS 350.050, 350.057, 350.060, 350.410, 350.450

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.057, 350.060, 350.090, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350[in pertinent part] requires the cabinet to promulgate[rules and] administrative regulations pertaining to surface coal mining and reclamation operations. This administrative regulation sets forth the basic requirements and general obligations of operators and permittees. This administrative regulation prescribes certain methods of disposal of materials and other obligations of operators and permittees.

Section 1. General Requirements for Permits and Exploration Approvals. (1) Requirement to obtain a permit. ~~A[no]~~ person or operator shall not engage in surface coal mining and reclamation operations without first having obtained from the cabinet a valid permit covering the area of land to be affected.

(2) Requirement to obtain exploration approval. Subject to the provisions of 405 KAR 8:020, ~~a[no]~~ person or operator shall not engage in coal exploration operations without first having:

~~(a) Filed[filed]~~ a written notice of intention to explore; or

~~(b) Obtained[having obtained]~~ written approval from the cabinet.

(3) Requirement to comply with permit or exploration approval. A permittee or person issued a coal exploration approval shall comply with all terms and conditions placed upon the permit or exploration approval by the cabinet and with all plans submitted as part of the application approved by the cabinet.

Section 2. Disposal of Materials. A person or operator engaged in surface coal mining and reclamation operations shall not throw, pile, dump, or permit the throwing, piling, dumping, or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350, nor place ~~these[such]~~ materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit ~~the[such]~~ materials to go beyond or outside of an area land which is under permit and for which bond has been posted pursuant to KRS Chapter 350.

Section 3. Unsafe Practices. (1) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations ~~that[which]~~ result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(2) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that causes, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources.

(3) ~~(a)~~ Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator

shall: ~~1. Immediately[immediately]~~ notify the persons whose life, health, or property are so threatened;

~~2. Take[shall take]~~ any and all reasonable actions to eliminate the conditions creating the emergency; ~~and~~

~~3. Immediately[shall immediately]~~ provide notice of the emergency conditions to the cabinet, to local law enforcement officials, and to appropriate local government officials.

~~(b)~~ Any emergency action taken by an operator pursuant to this subsection shall not relieve the operator of other obligations pursuant to 405 KAR Chapters 7 through 24 or of obligations under other applicable local, state, or federal laws and regulations.

Section 4.~~[Existing Structures on Areas Sought to be Permitted:~~

(1) Except as provided in subsection (2) of this section, no application for a permit or a revision which proposes to use an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:

(a) Irrespective of whether the structure meets the design requirements of 405 KAR Chapters 16 through 20, the existing structure will operate in compliance with the performance standards set forth in 405 KAR Chapters 16 through 20;

(b) No significant harm to the environment or public health or safety will result from the use of the structure; and

(c) The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.

(2) In the event the applicant fails to demonstrate that the existing structure meets the requirements of subsection (1) of this section, no application for a permit or revision which proposes to use such an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:

(a) Such existing structure complies with the performance standards of 405 KAR Chapter 1 or 3; and

(b) 405 KAR Chapters 16 through 20 require performance standards for such existing structure which either are not required by, or are more stringent than the performance standards of 405 KAR Chapter 1 or 3; and

(c) The applicant has included as a part of the application a compliance plan for modification or reconstruction of the structure demonstrating:

1. That the modification or reconstruction of the structure will bring the structure into compliance with the performance standards of 405 KAR Chapters 16 through 20 as soon as possible but not later than six (6) months from the date of issuance of the permit unless the applicant demonstrates to the satisfaction of the cabinet that a longer time is necessary due to the scope and nature of the reconstruction;

2. That the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

3. The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.

(d) Should the cabinet find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon or remove the existing structure in the manner provided in 405 KAR 16:010 or 405 KAR 18:010. The structure shall not be used for or to facilitate surface coal mining operations after the date a permanent program permit is required under 405 KAR 8:010.

(3) In the event that 405 KAR Chapter 1 or 3 prescribes a performance standard applicable to any such existing structure which performance standard has not been complied with by the applicant, no permit shall be issued by the cabinet unless the applicant shall have redesigned and reconstructed such existing

structure in accordance with the design requirements of 405 KAR Chapters 16 through 20.

~~(4) Existing structures allowed to operate subsequent to permit approval as provided in subsection (1) of this section shall not include coal waste piles used either temporarily or permanently as dams or embankments. Such existing coal waste piles allowed to operate subsequent to permit approval as provided in subsection (2) of this section must be modified or reconstructed in order to comply with the design requirements of 405 KAR Chapters 16 through 20 in addition to the performance standards.~~

~~(5) Any structures or facilities which must be reconstructed pursuant to subsection (2) of this section shall be reconstructed according to engineering plans prepared and certified by a registered professional engineer. Upon completion of reconstruction, the responsible engineer shall certify to the cabinet, within fourteen (14) days thereafter, that the reconstruction was performed in accordance with the approved design plans.~~

Section 5.] Hazard Classifications for Impoundments. (1) For proposed new sedimentation ponds or other new impoundments~~[and those proposed for reconstruction pursuant to Section 4(2) and (3) of this administrative regulation]~~, the responsible design engineer shall determine the structure hazard classification according to the classification descriptions. For structures classified (B) - moderate hazard or (C) - high hazard, the operator shall obtain a permit from the cabinet pursuant to KRS 151.250[.] and **405 KAR Chapters 7 through 24[administrative regulations adopted pursuant thereto]**, prior to beginning~~[reconstruction or]~~ construction.

(2) ~~The following structure[Structure] hazard classifications shall befare as follows: The following broad classes of structures are]~~ established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

(a) Class (A), [.] low hazard: **This class shall include** structures located:

**1. Where[such that] failure would cause loss of the structure itself but little or no additional damage to other property.**

**2. Generally[Such structures will generally be located] in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.**

(b) Class (B), [.] moderate hazard: **This class shall include** structures located:

**1. Where [such that] failure may cause significant damage to property and project operation, but loss of human life is not envisioned.**

**2. Generally [Such structures will generally be located] in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruptions of use or service of relatively important public utilities.**

(c) Class (C), [.] high hazard:

**1. This class shall include** structures located ~~where[such that] failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads.~~

**2. This classification shall[must] be used if failure would cause probable loss of human life.**

(3) The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the site and probable future development. Establishment of minimum criteria **shall[does]** not preclude provisions for greater safety, **if the engineer determines that these provisions are necessary[when deemed necessary in the judgment of the engineer]**. Considerations other than those mentioned in the above classifications may require that the established minimum criteria be exceeded, **if the cabinet determines that it is necessary for greater safety[as determined by the cabinet]**. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the design drawings.

(4) **If[When]** structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the

possibility of a multiple failure ~~shall[must]~~ be considered in assigning the structure classification of the upstream structure.

Section 5[6]. Reports Required. The operator shall submit such reports, documentation, certifications, or other information as the cabinet may require, or as may be required by KRS Chapter 350 and **405 KAR Chapters 7 through 24[administrative regulations adopted pursuant thereto]**.

Section 6[7]. Coal Exploration. (1) Any person conducting coal exploration~~[on or after the date specified in Section 11 of this administrative regulation]~~ shall either file a Notice of Intention to Explore or obtain approval of the cabinet as required by 405 KAR 8:020.

(2) The coal exploration performance standards in 405 KAR 20:010 shall apply to coal exploration ~~that[which] substantially disturbs the natural land surface [two (2) months after the date specified in Section 11 of this administrative regulation].~~

Section 7[8]. Compliance with 405 KAR Chapters 7 through 24 **shall[does]** not relieve any person or operator from the obligation to comply with other applicable administrative regulations of the cabinet.

Section 8[9]. The requirement to restore the approximate original contour of the land shall apply regardless of any reconstruction of any existing structure allowed~~[pursuant to Section 4 of this administrative regulation]~~.

Section 9[10]. Certifications by **Licensed[Registered]** Professional Engineers. (1) A document required to be certified shall be rejected by the cabinet as incomplete if its accuracy is not so attested.

(2) Certification by a qualified **licensed[registered]** professional engineer as required by 405 KAR Chapters 7 - 24 means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the **licensed[registered]** professional engineer or supervision of the **licensed[registered]** professional engineer's employees or subordinates. **This[Such]** certification shall not be construed to constitute a warranty or guarantee.

(3) Certification of maps, plans, and drawings. **If[Where]** 405 KAR requires that maps, plans, and drawings be certified by a qualified **licensed[registered]** professional engineer, the **licensed[registered]** professional engineer shall certify:

(a) That the information or documentation contained in the map, plan, or drawing is correct as determined by accepted engineering practices; and

(b) That the map, plan or drawing includes all the information required by KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(4) Certification of designs. Where 405 KAR Chapters 7 - 24 requires that a qualified **licensed[registered]** professional engineer design and certify a facility, he or she shall certify that:

(a) The design is in accordance with accepted engineering practices and recognized professional standards;

(b) The design complies with the design requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24; and

(c) Provided the facility is properly constructed, operated, and maintained, the design is adequate for the facility to meet the applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 - 24 insofar as such performance can reasonably be predicted by accepted engineering practices.

(5) Certification of construction.

(a) Where 405 KAR Chapters 7 - 24 requires that a qualified **licensed[registered]** professional engineer certify that a facility was constructed in accordance with the design approved by the cabinet, he or she shall certify:

1. That adequate inspections were conducted by the qualified

~~licensed/registered~~ professional engineer or by persons under his or her supervision;

2. That the construction was performed in accordance with accepted construction practices; and

3. Either that the facility was constructed in accordance with the design approved by the cabinet, or that the facility was constructed in accordance with the design approved by the cabinet except for certain minor deviations which will not adversely affect the performance of the facility nor render the facility in violation of KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(b) Any minor deviations shall be described in the certification document and the effect of the deviations upon the performance of the facility shall be explained.

(c) As-built drawings shall be submitted as a part of the certification.

(6) Certification of maintenance. Where 405 KAR Chapters 7 - 24 requires that a qualified ~~licensed/registered~~ professional engineer certify the maintenance of a structure, he or she shall certify that:

(a) An inspection of the structure was conducted by the ~~licensed/registered~~ professional engineer or by a person under his or her supervision; and

(b) Based on that inspection, the ~~licensed/registered~~ professional engineer has determined that the structure has been maintained as required by 405 KAR Chapters 7 - 24. [

~~(7) Certifications shall be made in the form prescribed by the cabinet, and the cabinet may reject any certification which is not made in such form.]~~

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Mine Reclamation and Enforcement**  
**(As Amended at ARRS, January 13, 2020)**

**405 KAR 7:050. Coal processing waste disposal sites.**

RELATES TO: KRS 151.125, 151.297, ~~224.10-100, 224.10-410~~~~[224.074]~~, 350.020, 350.090(1), 350.420

STATUTORY AUTHORITY: KRS 151.125, ~~224.10-410~~~~[224.033]~~, 350.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.020 ~~authorizes~~~~[states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS 350.020 directs]~~ the ~~Energy and Environment Cabinet to promulgate~~~~[cabinet to adopt whatever]~~ administrative regulations ~~that~~ are ~~[found]~~ necessary to accomplish the purpose of KRS Chapter 350. ~~[Furthermore,]~~ KRS 151.125 ~~authorizes the cabinet to promulgate administrative regulations concerning flood control, water resources, requirements for dams or reservoirs, and waste planning and management activities. KRS 224.10-410 requires the secretary to promulgate administrative regulations concerning~~~~[and 151.297 provide for the issuance of remedial orders whenever life or property are or may be endangered by the failure of any dam, reservoir, levee, embankment, or other water barrier. In addition, KRS 224.074 provides for]~~ the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This administrative regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because ~~these~~~~[such]~~ facilities are not otherwise

adequately regulated. This administrative regulation provides~~[-, among other things,]~~ for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This administrative regulation ~~shall apply~~~~[applies]~~ to all coal processing waste disposal sites, ~~such as~~~~[whether]~~ dams, waste impoundments, or waste banks, that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1)~~[Within sixty (60) days of September 21, 1982,]~~ Operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the cabinet regional office:

(a) All existing information currently available to the operator or owner, including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site ~~that includes~~~~[including]~~ moisture content and particle size gradation. This ~~submittal~~ shall also include copies of plans submitted to ~~[and]~~or approved by ~~the Mine Safety and Health Administration (MSHA)~~. If ~~these~~~~[such]~~ plans ~~[submitted to MSHA]~~ include all of the information required by this paragraph, then submittal of copies of ~~the~~~~[such]~~ plans shall suffice. ~~If~~~~[Where]~~ information required by this paragraph has already been submitted to the cabinet as a part of a permit application, the operator or owner shall ~~[so]~~ notify the cabinet regional office in writing and ~~shall~~~~[need]~~ not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility, as applicable, including a map showing the location of the facility.

(2) ~~(a)~~ Analyses and descriptions submitted under subsection (1)~~(a)~~ of this section shall be based upon current information available to the operator or owner.

~~(b) If the failure of the facility could cause damage to life or property or injurious effects on the environment of the Commonwealth, the cabinet shall [However, on a case-by-case basis, at any time, the cabinet may]~~ require the operator or owner to submit ~~[such]~~ additional plans and analyses or to conduct ~~the~~~~[such]~~ investigations and testing of materials ~~that are~~~~[as]~~ necessary to determine the stability of the facility ~~[where failure of the facility could cause damage to life or property or injurious effects on the environment of the Commonwealth].~~

~~(c) These investigations and tests [This]~~ may include~~[-, but is not limited to,]~~ seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding water, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with 405 KAR 16:100 or 405 KAR 18:100~~[either 405 KAR 1:240 or 405 KAR 3:180]~~.

(2) All other coal processing waste disposal sites shall comply with 30 C.F.R. 77.214 as amended at 36 Fed. Reg. 13,143 (1971) and 30 C.F.R. 77.215 as amended at 40 Fed. Reg. 41,776 (1975), ~~except~~ ~~[provided, however, no]~~ facility shall ~~not~~ be constructed in ~~a~~~~[such]~~ manner that ~~[it]~~ may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facility.

(3) Those portions of structures that have already been constructed and structures that have been completed ~~shall~~~~[need]~~ not be reconstructed ~~unless~~~~[except where]~~ reconstruction is ~~[determined by the cabinet to be]~~ necessary to ensure stability of the facility ~~[in order]~~ to:

~~(a) Eliminate [eliminate]~~ potential hazards to life or property; or

~~(b) Prevent [to prevent]~~ injurious effects on the environment of the Commonwealth.

(4) ~~This [Nothing in this]~~ administrative regulation shall ~~not~~ be construed as relieving an operator from the obligation to comply with any other provision of 405 KAR Chapters 7 - 24, including ~~but not limited to,~~ compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. ~~The cabinet may require operators[Operators]~~ or owners of coal processing waste disposal sites ~~[may be required by the cabinet]~~ to revise the facility design ~~and[and/or]~~ to implement ~~[such]~~ remedial measures ~~if[as]~~ necessary to comply with Section 3 of this administrative regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this administrative regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified ~~licensed[registered]~~ professional engineer or by qualified persons under the engineer's supervision. ~~The[and the]~~ facility shall be certified within two (2) weeks of each inspection by the responsible qualified ~~licensed[registered]~~ professional engineer as having been constructed in accordance with the design approved by the cabinet ~~under 405 KAR Chapters 7 through 24. If[Where]~~ the cabinet has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA.

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**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(As Amended at ARRS, January 13, 2020)**

**405 KAR 8:010. General provisions for permits.**

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 350.500-350.521, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 470x-6, 661-667e16, 668-668d, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate ~~[rules and]~~ administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation establishes provisions for permits to conduct these operations, including the conditions for which permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued

permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions regarding permits, and surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit pursuant to 405 KAR Chapter 8.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations or underground only operations shall:

~~1.~~ File a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24; ~~and~~

~~2.[, and shall]~~ Not begin the operation until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit pursuant to Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted pursuant to prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted pursuant to a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet pursuant to 405 KAR Chapters 7 through 24.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit pursuant to Section 23 of this administrative regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations pursuant to a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955; and

(b) Applicable requirements of the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; the Fish and Wildlife Coordination Act of 1934, 16 U.S.C. 661-667d; the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703-712; the National Historic Preservation Act of 1966, (54 U.S.C. 300101 – 307108; and the Bald Eagle Protection Act of 1940, 16 U.S.C. 668-668d, as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as established in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties agree are appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit may submit to the cabinet a Preliminary Application, MPA-00.

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(2) If the permittee chooses to submit a Preliminary Application, the Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area, shadow area, and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) Pursuant to KRS Chapter 350 and 405 KAR Chapters 7 – 24, personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection pursuant to Section 8(8) of this administrative regulation.

(b) The application and copies shall be prepared, assembled, and submitted with attachments, plans, maps, certifications, drawings, calculations, or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations.

(c) The following forms shall be submitted by an applicant:

1. Permittee Information for a Mining Permit, MPA-01;
2. Operator Information for a Mining Permit, MPA-02;
3. Technical Information for Mining Permit, MPA-03;
4. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B.;
5. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.C.;
6. Update of Permittee or Operator Information, MPA-05;
7. Change of Corporate Owners, Officers or Directors, MPA-06;
8. Application to Transfer a Mining Permit, MPA-07;
9. Revision Application to Change Operator, MPA-08;
10. Application for Renewal of a Mining Permit, MPA-09;
11. Application for a Coal Marketing Deferment, MPA-10; and
12. Minor Field Revision Application Form, SME 80.

(d) The application shall be complete with respect to all information required by 405 KAR Chapters 7 - 24~~[KAR Title 405]~~ and include, at a minimum for:

1. Surface mining activities, all the applicable information required pursuant to 405 KAR 8:030;
2. Underground mining activities, all the information required pursuant to 405 KAR 8:040; and
3. Special types of surface coal mining and reclamation operations, all the information required pursuant to 405 KAR 8:050.

(e) An application shall not be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information established in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

- (a) Names of persons or organizations that collected and analyzed the data;
- (b) Dates of the collection and analyses; and
- (c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address, and position of officials of each private or academic research organization or

governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either the applicant or some other person to serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If information marked on the preliminary map required pursuant to Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information established on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area, shadow area, and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation.

(a) If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted.

(b) An acreage fee shall not be required for surface areas

overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or the applicant's authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the:

1. Application is submitted to the cabinet; or
2. Applicant receives the notification from the cabinet pursuant to Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement and that written objections to the application shall be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, in accordance with this section that shall consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum:

- (a) The name and business address of the applicant;
- (b) A map or description that shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used;

(c) The location where a copy of the application shall be available for public inspection pursuant to subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted pursuant to Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an

experimental practice pursuant to 405 KAR 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

- (a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

- (b) The application number;

- (c) Where a copy of the application may be inspected; and

- (d) Where comments on the application may be submitted pursuant to Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

- (a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

- (b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

- (c) Those agencies with an interest in the particular proposed operation including the:

1. USDA Soil Conservation Service State Conservationist;

2. Local U.S. Army Corps of Engineers district engineer;

3. National Park Service;

4. U.S. Department of Fish and Wildlife and Kentucky Department of Fish and Wildlife Resources; and

5. State historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

- (a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and

- (b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided pursuant to Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within the public agency's area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or could/may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written



objections:

- (a) Transmit a copy of the objections to the applicant; and
- (b) File a copy at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

- (a) Briefly summarize the issues to be raised by the person requesting at the conference;
- (b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and
- (c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant pursuant to Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted as established in paragraphs (a) through (c) of this subsection.~~according to the following:]~~

(a) If requested pursuant to subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.~~:]~~

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.~~:] and]~~

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet shall arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference~~]; and~~

~~(d) The requirements of 405 KAR 1:090 and 1:110 shall not apply to the conduct of the conference.]~~

1. The conference shall be conducted by a representative of the cabinet, who shall accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required pursuant to 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur.

1. The application shall be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884.

2. This copy is not required to need not include confidential information exempt from disclosure pursuant to subsection (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or could[~~may~~] be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 400 KAR 1:110, Section 9.

(d) Confidential information shall be limited to information:

1. That pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and

2. On the nature and location of archaeological resources on public land and Indian land as required pursuant to the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.

3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.

4. If, after ten (10) working days, the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b)1. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied.

2. A determination that an application is administratively complete shall not mean that the application is complete in every

detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods established in Section 16 of this administrative regulation, the cabinet shall either notify the applicant:

(a) Of the cabinet's decision to issue or deny the application; or

(b)1. In writing, by certified mail, return receipt requested, or by registered mail, **[promptly]** upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies.

2. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, or any other state's laws or administrative regulations pursuant to SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state in which violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and administrative regulations pursuant to SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is established in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required pursuant to subparagraph (1) of this paragraph.

(d) Any permit that is issued on the basis of proof submitted pursuant to paragraph (a)1. of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal established in paragraph (a)2 of this subsection, shall be conditionally issued.

(e)1. If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator established in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a

nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued.

2. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 400 KAR 1:110, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. An application for a permit, revision (as applicable), or amendment of a permit shall not be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information established in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished in accordance with the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed pursuant to the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area and shadow area;

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations pursuant to 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2), or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as established in 405 KAR 24:040, Section 2(5);

(5)(a) The proposed operations **shall/will** not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as established in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that additional protection measures are not necessary;

(6) For operations involving the surface mining of coal in which the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required pursuant to 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(8) The applicant has paid all reclamation fees from previous

and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of a nature and duration and with resulting irreparable damage to the environment to indicate an intent not to comply with SMCRA or KRS Chapter 350;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements established in 405 KAR 16:210 and 405 KAR 18:220 for approval of a long-term, intensive agricultural postmining land use;

(12) The applicant may reasonably be expected to submit the performance bond or other equivalent guarantee required pursuant to 405 KAR Chapter 10 prior to the issuance of the permit;

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required pursuant to 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544);

(17) The applicant has not forfeited any bond pursuant to KRS Chapter 350. If the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended, or terminated pursuant to KRS Chapter 350. If the applicant has had a permit revoked, suspended, or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(19) The operation shall/will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

(20) The surface coal mining operation shall/will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as established in 405 KAR 24:040; or

(21) For a proposed re-mining operation that the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated that the proposed site of the operation is/will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information established in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(c) of this administrative regulation of a major revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application for a minor revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application.

a. The timeframes for review shall be:

(i) Fifteen (15) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation; and

(ii) Thirty (30) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

b. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) or thirty (30) working day period available to the department; and

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods established in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The regional office manager of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet approves the application, the cabinet shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of the decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet pursuant to this subsection shall be specifically established in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall constitute knowledge and acceptance of the conditions established in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been established in the permit. (1) General. The general conditions established in paragraphs (a) through (c) of this subsection shall apply to a permit issued by the cabinet.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(b) The permittee shall conduct all surface coal mining and reclamation operations as established in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken.

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted pursuant to 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any

adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

1. Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures established in the permit as necessary to prevent significant, imminent environmental harm that **could/may** affect the health or safety of the public; and

2. Utilizing any methods established in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced pursuant to the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted pursuant to the permit or after an order for cessation and immediate compliance is issued pursuant to 405 KAR 12:020, Section 3, for operations conducted pursuant to the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has not been a change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee pursuant to 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued pursuant to 405 KAR Chapter 8 during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) The cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 400 KAR 1:110, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation

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operations established in the existing application and approved pursuant to the current permit;

(b) If a revision is required by an order issued pursuant to Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required pursuant to 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as established in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of a scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that **could[may]** be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;
2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;
3. A variance to approximate original contour requirements;
4. Construction or relocation of a road, if the construction or relocation could adversely affect the interests of persons other than the surface owner;
5. A change that may adversely affect significant fish and wildlife habitats or endangered species;
6. A proposed experimental practice;
7. A change that may cause a major impact on the hydrologic balance;
8. An incidental boundary revision that affects a new watershed; **and**
9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms MPA-01 and MPA-03 pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision pursuant to subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision established in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal.

(b) If a proposed minor revision is actually a major revision pursuant to Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c)1. The cabinet shall notify, in writing, those persons that could have an interest or **could[may]** be adversely affected by the proposed change.

2. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department, unless the number of persons that potentially could have an interest or **could[may]** be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine if the proposed minor revision is a major revision and shall not be processed pursuant to this paragraph. The following proposals

shall be a minor field revision:

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (pursuant to paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3.a. A proposal to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted.

b. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:

a. The drainage area to the structure shall remain the same as the original design;

b. The proposed location shall not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and

b. The diversions have previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of

planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. A change in tree species is not involved unless concurrently approved pursuant to subparagraph 9 of this paragraph;

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer-mounted unit;

b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, or a coal stockpile if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;

22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;

23. A proposal to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;

24.a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and

(vii) An additional performance bond in the amount of \$5,000 has been filed by the permittee.

b. The regional administrator, as established in paragraph (b) of this subsection, may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits;

25. Except as established in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. As established in 405 KAR 7:040, Section 5, structure has a hazard classification of B or C;

b. Impoundment is a developed water resource land use;

c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or

e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;

26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains an MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and

27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.

2. The time frame for review in Section 16(1)(a)3 of this

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administrative regulation shall begin at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it:

1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;
2. Is contiguous to the current permit area;
3. Is within the same watershed as the current permit area;
4. Is required for an orderly continuation of the mining operation;
5. Involves mining of the same coal seam or seams as in the current permit;
6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;
7. Does not involve a property on which mining is prohibited pursuant to KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining pursuant to 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;
8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;
9. Does not constitute a change in the current method of mining; and
10. Shall be reclaimed in conformity with the current reclamation plan.

(g) Extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances shall be minor revisions.

(4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved pursuant to this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.

(c)1. Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection.

2. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change.

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same

information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by 405 KAR 8:030, Section 3 and 8:040 shall be required~~[7]~~.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required pursuant to Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

- a. The permit number;
- b. The geographic location of the permit area;
- c. The name and business address of the permittee;
- d. A statement that the permittee proposes to change the operator approved in the permit;
- e. The names and business addresses of the currently approved operator and the proposed operator;
- f. The cabinet address to which written comments may be sent pursuant to paragraph (f) of this subsection; and
- g. The time available for submission of the comments.

(f) A person whose interests are or ~~could~~**[may]** be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator pursuant to the criteria in Section 13(4) of this administrative regulation; and

2. Meets the other applicable requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period pursuant to paragraph (f) of this subsection.

2. A period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period established in this paragraph, then the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(7) Fees. An application for a revision shall include a basic fee, except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for shadow area that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for

renewal. Any valid, existing permit issued pursuant to 405 KAR Chapter 8 shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. An application for renewal of a permit shall be submitted within the time established by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance with this section, and shall include:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same pursuant to Section 8 of this administrative regulation;

(c) Evidence that liability insurance pursuant to 405 KAR 10:030, Section 4, for the proposed period of renewal;

(d) A renewal fee of \$750;

(e) Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established pursuant to Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being **[satisfactorily]**met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards pursuant to KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet **[requires/might require]** pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining if to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review established in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted pursuant to any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in

accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession and the applicant shall submit:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of \$750;

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent pursuant to subsection (3) of this section; and

(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or **[may]** be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria established in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee; **[and]**

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets all requirements necessary to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice established in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor.

(a) All rights and liabilities pursuant to the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit.

(b) The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit pursuant to KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted pursuant to a permit.

(a) A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

(b) A successor in interest seeking to change the conditions of



mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet shall release the prior permittee from bond liability on the permit area if the successor in interest has:

- (a) Filed a performance bond satisfactory to the cabinet;
- (b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;
- (c) Submitted proof of execution of the agreement; and
- (d) Assumed the liability pursuant to KAR Title 405 for the reclamation of the areas affected by all prior permittees.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension to an area covered by a permit shall not be approved, as established in Sections 20 (permit revisions) or 21 (permit renewals) of this administrative regulation.

(a) An extension shall be made by application for another permit.

(b) If the permittee desires to add the new area to an existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405 amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits pursuant to KAR Title 405.

(2) A fee for an amendment to existing permits shall be submitted to the cabinet as established in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that **could/may** be adversely affected may request a hearing on the reasons for the final decision. The request shall be in accordance with 400 KAR 1:110, Section 8.

(2) Any applicant or any person with an interest that **could/may** be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to:

(a) Judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) An action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits established in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Pursuant to the violation review criteria of the cabinet upon permit issuance:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible

agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, pursuant to the violations review criteria of the regulatory program upon permit issuance an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, pursuant to subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit pursuant to subsection (4) of this section.

(4) Rescission procedures. If the cabinet, pursuant to subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet pursuant to subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet pursuant to subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee ~~to the satisfaction of the responsible agency~~;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying ~~with/to the satisfaction of~~ the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations pursuant to the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing. A formal hearing shall be in accordance with 400 KAR 1:110, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, October 2017;

(b) "Permittee Information for a Mining Permit", MPA-01, August 2010;

(c) "Operator Information for a Mining Permit", MPA-02, August 2010;

(d) "Technical Information for a Mining Permit", MPA-03, October 2017;

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Update of Permittee or Operator Information", MPA-05, August 2010;

(h) "Change of Corporate Owners, Officers or Directors", MPA-

06, October 2017;

(i) "Application to Transfer a Mining Permit", MPA-07, June 2013;

(j) "Revision Application to Change Operator", MPA-08, August 2010;

(k) "Application for Renewal of a Mining Permit", MPA-09, August 2017;

(l) "Application for a Coal Marketing Deferment", MPA-10, August 2017

(m) "Minor Field Revision Application Form", SME 80, revised August 2010; and

(n) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(As Amended at ARRS, January 13, 2020)**

**405 KAR 8:030. Surface coal mining permits.**

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for granting a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the permit applicant submit to the cabinet after approval by the Mine Safety and Health Administration (MSHA), a: (1) Copy of the final approved design plans for impounding structures; (2) Copy of all correspondence with MSHA; (3) Copy of technical support documents requested by MSHA; and (4) Notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements established[set forth] in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as established[set forth] in 405 KAR 8:010.

(3) This administrative regulation establishes[sets forth] information required to be contained in each application for a permit to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) An application shall contain the following information, except that the submission of a

Social Security number shall be voluntary:

(a) A statement identifying if the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b) The name, address, telephone number and, as applicable, Social Security number, and employer identification number of the:

1. Applicant;
2. Applicant's resident agent; and
3. Person who will pay the abandoned mine land reclamation fee;

(c) For each person who owns or controls the applicant:

1. The person's name, address, Social Security number, and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

4. Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

1. Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(e) The names and addresses of:

1. Every legal or equitable owner of record of the property to be mined;

2. The holders of record of any leasehold interest in the property to be mined; and

3. Any purchaser of record, under a real estate contract, of the property to be mined;

(f) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area;

(g) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval;

(h) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter; and

(i) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands that are contiguous to the area to be covered by the permit.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (1)(a) through (d) of this section.

(3) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(4) The permittee shall submit updates of the information established in paragraphs (a) through (c) of this subsection in writing to the cabinet within thirty (30) days of the effective date of any change. An update shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit the

information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection. **This information shall include:**

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) If the permittee or other persons **established/specified** in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. (1) Each application shall contain:

(a) A statement identifying if the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1. Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

2. Forfeited a coal mining performance bond or similar security deposited in lieu of bond;

(b) If any suspension, revocation, or forfeiture as established in paragraph (a) of this subsection has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3. The current status of the permit, bond, or similar security involved;

4. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5. The current status of these proceedings; and

(c) For any violation of a provision of SMCRA; ~~any~~ federal regulations enacted pursuant to SMCRA; ~~any~~ KRS Chapter 350 and administrative regulations adopted pursuant thereto; ~~any~~ any other state's laws or regulations under SMCRA; ~~any~~ any federal law, rule, or regulation pertaining to air or water environmental protection; ~~any~~ or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include ~~the following information~~, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number; the dates of issuance of the violation notice and MSHA number; the name of the person to whom the violation notice was issued; and the name of the issuing regulatory authority, department, or agency;

2. A brief description of the particular violation alleged in the notice;

3. The final resolution of each violation notice, if any; and

4. For each violation notice that has not been finally resolved:

a. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation;

b. The current status of the proceedings and of the violation notice; and

c. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, if

necessary, the applicant shall update the application to indicate what change, if any, has occurred in the information previously submitted under subsection (1) of this section.

(3) Upon request by a small operator, the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section who are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and if that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information identifying if the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, ~~which is acceptable to the cabinet,~~ shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include a description of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The description required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) According to historical databases, the cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information that has been collected, analyzed, and submitted in the detail and manner sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation that will be implemented during the mining and reclamation process to assure protection of the hydrologic balance or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures, and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) if reclamation as required by 405 KAR can be accomplished and if the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, shall demonstrate if the mining operation

is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet if this information is:

1. Needed in preparing the cumulative impact assessment; and
2. Available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation, or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

- (a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or
- (b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area that shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material ~~that~~**[which]** has been collected using ~~acceptable~~ sampling techniques ~~appropriate for the material type~~.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined.

2. Where aquifers located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata that have a potential to produce acid drainage and to determine the area and vertical extent of aquifers that ~~could~~**[may]** be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling ~~established~~**[specified]** in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information;

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata ~~that~~**[which]** have a potential to produce acid or toxic drainage; and

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(2) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

(a) ~~1.~~ The applicant can demonstrate through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

~~2.~~**[(b)]** Other information equivalent to that required by this subsection is available to the cabinet and is made a part of the

permit application; and

**(b)(c)** The cabinet provides a written statement granting a waiver.

(3) The application shall contain a description of the geology of the proposed permit area and adjacent area that shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers **could[may]** be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers; and

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers that **could[may]** be adversely affected by the mining operation.

(4) If necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet shall require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata that **could[may]** be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and if possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage, or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, pH, dissolved iron, dissolved manganese, acidity, alkalinity, and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information **required by[described in]** subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require groundwater information in addition to that **established[described]** in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments, or other surface water bodies in the permit and adjacent area that are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and if possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership if appropriate, of all streams, lakes, impoundments, and other surface water bodies that receive run-off from watersheds that will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds that will be disturbed by the mining operation and **could[may]** contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges that **could[may]** be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds that will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, total suspended solids, pH, total iron, total manganese, acidity, alkalinity, and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require surface water information in addition to that established in subsections (2), (3), and (4) of this section, including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities **could[may]** proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) Upon cabinet request, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet shall request additional data if necessary to

ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) ~~if~~**[Where]** the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) If a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required if the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 – 1544), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if fish and wildlife information is necessary, and the scope of information needed, shall be made ~~on a case-by-case basis~~**[in]** consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine if lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland if the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation that show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area ~~could~~**[may]** be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and if the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall ~~decide to~~**[grant]** or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service ~~to decide when deciding~~**[on]** a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described; and

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of

the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(2) The application shall state if the proposed permit area has been previously mined, and, if so and, if available, the:

- (a) Type of mining method used;
- (b) Coal seams or other mineral strata mined;
- (c) Extent of coal or other minerals removed;
- (d) Approximate dates of past mining; and
- (e) Uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters that will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area; and

(l) Other relevant information required by 30 C.F.R. 779.24(l).

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or that[which]

will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area; and

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the requirements established in subparagraphs 1. through 3. of this paragraph.

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, if impractical, at locations and in a manner sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance representative of the remaining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information established[specified] in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application that are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet if there is a material change. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as established[set forth] in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum a narrative:

(a) Description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) Explaining the construction, modification, use, maintenance, and removal of the following facilities (unless

retention of the facilities is to be approved as necessary for postmining land use as **established[specified]** in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas pursuant to paragraphs (a) through (c) of this subsection.

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning, and loading area;
5. Each topsoil, spoil, coal waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

- (a) A projected timetable for the completion of each major step in the mining and reclamation plan;
- (b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; **[and]** measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150 and 16:190, Section 3, and a description of the contingency plans that have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Chapter 85), the Clean Water Act (33 U.S.C. Chapter 26), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations **that[which]** the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure that describe the structure's current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, ~~that[if]~~ the structure meets the performance standards of 405 KAR Chapters 16 through 20 ~~[or, if the structure does not meet those performance standards, a showing of if the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 4].~~

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

- (a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;
- (b) A construction schedule that shows dates for beginning and completing interim steps and final reconstruction;
- (c) Provisions for monitoring the structure to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and
- (d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee shall meet with regard to:

- (a) Ground vibration and airblast;
- (b) The bases for the ground vibration and airblast limitations; and
- (c) The methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Office of Mine Safety and Licensing.



Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including strength parameters, pore pressures, and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include:

(a) The number, location, and depth of borings or test pits that shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts that shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

(b) A report of appropriate geotechnical analysis, if approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220;

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220; and

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that ~~could~~**[may]** be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may, pursuant to 30 C.F.R. 780.31, require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places

through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as ~~established~~**[set forth]** in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate that protective measures are not necessary for the operation to:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures ~~established~~**[identified]** under subsection (1) of this section. The design shall be prepared in a manner and detail ~~to clearly depict~~**[acceptable to the cabinet including]**, as appropriate, calculations, maps, drawings, and written explanations ~~[as]~~**[as]** necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail necessary to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for

water supply diminution;

4. Suspended solids at low flow; and

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers that are not currently being used for water supply but have the potential to be developed as a water supply source; and [.]

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on if the proposed surface mining activities could[may] proximately result in contamination, diminution, or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate use upon application.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16 and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for

each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16.100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to:

(a) The number, location, and depth of borings and test pits determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions;

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that could[may] affect the particular dam, embankment, or reservoir site;

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and

(d) Consideration of the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activity, the application shall contain an air pollution control plan that includes:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of

the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved as practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats **established/identified** under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;
2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;
3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;
4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or
5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if a protection and enhancement plan is necessary shall be made **on a case-by-case basis** in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities that **could/may** be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration that has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(As Amended at ARRS, January 13, 2020)**

**405 KAR 10:050. Bond forfeiture.**

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.130, 350.131, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [~~in pertinent part~~] requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to **ensure/insure** that satisfactory reclamation is accomplished. This administrative regulation **establishes/sets forth** the procedures and criteria by means of which a bond may be forfeited to the cabinet. This administrative regulation **establishes/sets forth** that certain violations of KRS Chapter 350 and administrative regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This administrative regulation **establishes/sets forth** that a hearing may be requested before forfeiture can be effected. This administrative regulation **establishes the/specifies a** method to determine the amount of bond forfeiture. This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the

procedures and criteria of this administrative regulation.

(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform the measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) **Except as established in subsection (2) of this section,** if forfeiture of the bond is required by Section 3 of this administrative regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 400 KAR 1:110, Section 9; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, **[the secretary shall]** enter a final order of forfeiture and **[the cabinet shall]** proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 400 KAR 1:110, Section 5.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. The funds shall be deposited in an appropriate account for the payment of these costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.

(5) Return of unused forfeited bond funds for interim or permanent program permit area overlapped by permanent program permit area. If the cabinet has not completed the reclamation plan on a permit area under ~~30 C.F.R. Part 715~~~~[405 KAR Chapter 1 or 3]~~ for which the bond was forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area and any related off-permit disturbances are entirely contained within the permit area of a subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet shall retain the funds from the forfeited bond until the entire overlapped permit area and any related off-permit disturbances have been disturbed by the overlapping permittee and then shall return the unused funds to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set off the proceeds under state law.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the

conditions of the permit or 405 KAR Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this administrative regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (if all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit, ~~[?]~~

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) If a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Mine Reclamation and Enforcement**  
**(As Amended at ARRS, January 13, 2020)**

**405 KAR 16:100. Permanent and temporary impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.420, 350.455, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments which is not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of

impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application in accordance with 405 KAR 8:030, Section 34(3).

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined by/in] KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet in accordance with 405 KAR Chapters 7 through 24. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a)1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2. 2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design shall/will] ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based on site and slope stability[upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet], the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 16:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet pursuant to subsection (2) of this section.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or

otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments that/which] have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined by/at] KRS 151.100(12); and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways, which shall be designed and constructed to safely pass the design precipitation event established/specified] in this subsection unless the cabinet requires a design based on a larger precipitation event due to site specific conditions/larger event]. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event established/specified] in this subsection.

(a) Except as established/provided] in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hours precipitation event.

(c) Class B and C structures and all permanent "dams," as defined by KRS 151.100(12)]dams as defined in KRS 151.100] shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness, or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines **and notifies the permittee in writing[on a case-by-case basis]** that engineering inspection and certification are necessary to **ensure[insure]** public health and safety or environmental conditions, **in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing]**.

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examination within a quarter are required **based on evidence of structural weakness or hazardous conditions**. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

(a) Cut vegetative growth where necessary to facilitate inspection and repairs;

(b) Clean any ditches and spillways; and

(c) Remove any combustible material present on the surface, other than that used for stability, such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon **compliance with subsections (1) through (6) of this section.[the following demonstration:]**

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water **shall[will]** be suitable on a permanent basis for its intended use and, after reclamation, **shall comply with[will-meet]** applicable state and federal water quality standards, and discharges from the impoundment **shall comply with[will-meet]** applicable effluent limitations and **shall[will]** not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level **shall[will]** be sufficiently stable and be capable of supporting the intended use.

(4) Final grading **shall provide[will-provided]** for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment **shall[will]** not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment **shall[will]** be suitable for the approved postmining land use.

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**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Reclamation and Enforcement  
(As Amended at ARRS, January 13, 2020)**

**405 KAR 16:210. Postmining land use capability.**

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 350.465[KRS Chapter 350 in pertinent part]** requires the cabinet to promulgate **[rules and]** administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation **establishes[sets forth]** requirements for restoring land use capability after completion of surface mining activities<sup>[i]</sup> and specific criteria for approval of postmining land uses **that[which]** differ from the premining land use.

Section 1. General. (1) Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses **that[which]** the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

(a) Cropland;

(b) Pastureland;

(c) Forest land;

(d) Residential;

(e) **Industrial or commercial[Industrial/commercial];**

(f) Recreation;

(g) Fish and wildlife;

(h) Developed water resources; **and**

(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses ~~that~~**[which]** the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area.~~;~~**[however,]** More than one (1) land use ~~may~~**[can]** exist within a proposed permit boundary.

(2)(a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR~~[Chapter 1 or 3 or]~~ Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.~~;~~**[except]**

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved ~~that~~**[which]** is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use; ~~or;~~**[**

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. ~~The~~**[These]** limitations ~~in this subsection~~ shall apply to permits issued after ~~November 26, 1991~~**[the effective date of this amendment]**. Portions of the permit area with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050, Section 4(3).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses ~~shall~~**[may]** be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Mine Reclamation and Enforcement**  
**(As Amended at ARRS, January 13, 2020)**

**405 KAR 18:100. Permanent and temporary impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.151, 350.420, 350.455, 350.465, 30 C.F.R. ~~77.216, 77.216-3~~, Parts 730-733, ~~Part~~ 735, 817.49, ~~Part~~ 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028~~(1), (5)~~, 350.151~~(1)~~, 350.465~~(2)~~, 30 C.F.R. Parts 730-733, ~~Part~~ 735, 817.49, ~~Part~~ 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the ~~Energy and Environment~~ Cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for underground mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments, which ~~are~~**[is]** not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application after the plan has been approved by MSHA.

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100~~(12)~~, shall comply with 405 KAR 7:040, Section ~~4~~**[5]** and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified ~~licensed~~**[registered]** professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet ~~in 405 KAR Chapters 7 through 24~~. The qualified ~~licensed~~**[registered]** professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a) 1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at

least 1.2.

2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement. ~~Upon request, the minimum height increase may be reduced if, unless it has been demonstrated to the cabinet that~~ the material used and the design ~~shall~~will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based ~~on site and slope stability [upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet]~~, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 18:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet pursuant to subsection (2) of this section.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 18:190, Section 4.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments ~~that~~which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class

A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways ~~that~~which shall be designed and constructed to safely pass the design precipitation event specified in this subsection, unless the cabinet requires a design based on a larger precipitation event due to site specific conditions. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hour precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100~~(12)~~ shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified licensed/registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the design and construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified licensed/registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines and notifies the permittee in writing [on a case-by-case basis] that engineering inspection and certification are necessary to ensure/insure public health and safety or environmental conditions~~, in which case the cabinet shall~~



~~establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing.~~

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examinations within a quarter are required based on evidence of structural weakness or hazardous conditions. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Kentucky Emergency Management/Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

(1) Cut vegetative growth where necessary to facilitate inspection and repairs;

(2) Clean any ditches and spillways; and

(3) Remove any combustible material present on the surface, other than that used for stability such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

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ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Reclamation and Enforcement  
(As Amended at ARRS, January 13, 2020)

405 KAR 18:220. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, Part 735, 817.133, Part 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.020, 350.028(~~1~~), (5), 350.151, 350.465, 30 C.F.R. Parts 730-733, Part 735, 817.133, Part 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465[~~KRS Chapter 350 in pertinent part~~] requires the Energy and Environment Cabinet to promulgate[~~rules and~~] administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation establishes/sets forth requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses that/which differ from the premining land use.

Section 1. General. (1) Prior to the final release of the performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

(a) Cropland;

(b) Pastureland;

(c) Forest land;

(d) Residential;

(e) Industrial/commercial;

(f) Recreation;

(g) Fish and wildlife;

(h) Developed water resources;

(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; except that/however, more than one (1) land use can exist within an area to be affected by surface operations and facilities.

(2)(a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR[~~Chapter 1 or 3 of~~] Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining[~~; except~~]

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of

this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. ~~The limitations in this subsection~~[These limitations] shall apply to permits issued after ~~November 26, 1991~~[the effective date of this amendment]. Portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses ~~shall~~[may] be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

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**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Reclamation and Enforcement  
(As Amended at ARRS, January 13, 2020)**

**405 KAR 20:040. Prime farmland.**

RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465, 30 C.F.R. Parts 715, 823

STATUTORY AUTHORITY: KRS ~~350.020~~[Chapter 13A], 350.028(1), (5), 350.100, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~350.020, 350.028(1), (5), and 350.450~~ require~~[Chapter 350 in pertinent part requires]~~ the Energy and Environment Cabinet to promulgate environmental protection performance standards specifically including special requirements for the protection of prime farmland. This administrative regulation ~~establishes~~[specifies] special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

Section 1. Scope and Purpose. This administrative regulation ~~establishes~~[sets forth] special environmental protection

performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Section 2. Responsibilities. (1) ~~[The federal regulations at]~~ 30 C.F.R. Part 823 ~~requires~~[require that] the U.S. Soil Conservation Service (SCS) within each state to establish specifications for prime farmland soil removal, storage, replacement, and reconstruction. The Kentucky specifications are established in "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland."

(2) ~~[The federal regulations at]~~ 30 C.F.R. Part 823 ~~requires~~[require that] the cabinet to use the soil-reconstruction specifications established by the SCS, as referenced in subsection (1) of this section, to carry out its responsibilities.~~[Therefore, the following document is incorporated herein by reference: "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland," January 1986. Copies may be obtained from the Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky.]~~

Section 3. Applicability. The requirements of this administrative regulation, including the SCS prime farmland specifications of Section 2 of this administrative regulation, shall apply to prime farmland affected by surface coal mining and reclamation operations except that which has been excluded in accordance with 405 KAR 8:050, Section 3(1).

Section 4. Soil Removal and Stockpiling. (1) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(2) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of Section 5(1) of this administrative regulation.

(3) Soil removal and stockpiling operations on prime farmland shall be conducted to:

(a) Separately remove the topsoil, or remove other suitable soil materials where ~~the~~[such] other soil materials will create a final soil having a greater productive capacity than that which ~~exists~~[exist] prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(b)1. Except as provided by subparagraph 2 of this paragraph, separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by Section 5(1) of this administrative regulation. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials.

2. If~~[Where]~~ combinations of ~~the~~[such] soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling ~~shall~~[is] ~~not~~ be required~~[necessary]~~.

(4) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall meet the requirements of 405 KAR 16:050 or 18:050.

Section 5. Soil Replacement. (1) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. The determination of whether a horizon inhibits or prevents root penetration shall be in accordance with the SCS specifications under Section 2 of this administrative regulation.

(2) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(3) The operator shall replace the B horizon, C horizon, or other suitable material specified in Section 4(3)(b) of this

administrative regulation to the thickness needed to meet the requirements of subsection (1) of this section.

(4) The operator shall replace the topsoil or other suitable soil materials specified in Section 4(3)(a) of this administrative regulation as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

Section 6. Revegetation and Restoration of Soil Productivity.

(1) ~~[Requirements for]~~ Revegetation and demonstration of successful restoration of soil productivity shall comply with the requirements established~~[are set forth]~~ in "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining," Kentucky Department for Natural Resources in consultation with the U.S. Soil Conservation Service~~[, June 1985. This document is incorporated herein by reference. Copies may be obtained from the department]~~.

(2) Data on crop yields from restored prime farmland soils shall be verified by the cabinet. The permittee shall notify the appropriate regional office of the department of harvest dates in order to provide the opportunity for cabinet personnel to monitor yield measurements. This notification shall be in writing at least thirty (30) days prior to anticipated harvest dates and shall be followed up by telephone prior to actual harvest dates.

(3)~~[Irrespective of the provisions of 405 KAR 1:005,]~~ This section shall also apply to prime farmland mined under the interim regulatory program under 30 C.F.R. Part 715~~[405 KAR 1:250]~~.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland", January 1986;

(b) "Kentucky Prime Farmland Revegetation and Crop Production Restoration after Mining", June 1985.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Mine Permits, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, January 13, 2020)**

**704 KAR 8:080. Required academic standards in career studies and financial literacy.**

RELATES TO: KRS ~~156.070(1), 156.160, 158.645~~~~[156.160, 156.070(1)]~~, 158.1411, 158.1413, ~~158.645~~~~[158.645, 158.6451]~~, 158.6453, 160.290

STATUTORY AUTHORITY: KRS ~~156.070(1), 156.160~~~~[156.160, 156.070(1)]~~, 158.1411~~[,]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. Beginning with the 2019-2020 school year, KRS 158.1413 requires each school district to implement essential workplace ethics programs that promote characteristics that are critical to success in the workplace. KRS

158.1411 requires that the ninth grade class of the 2020-2021 school year and each year thereafter, successfully complete one (1) or more courses or programs that meet the financial literacy standards as a Kentucky public high school graduation requirement. This administrative regulation incorporates by reference the Kentucky Academic Standards for Career Studies, which contain the academic content standards of essential skills, career exploration, and financial literacy for use in Kentucky's common schools.

Section 1. (1) The academic standards for career studies outline the minimum content standards that Kentucky students shall learn within each respective grade band. The standards are organized by three (3) domains: essential skills, careers, and financial literacy.

(2) Kentucky schools shall utilize the financial literacy domain standards for grades nine (9) through twelve (12) to design courses and programs that meet the Kentucky high school graduation requirement established in KRS 158.1411.

(3) Pursuant to KRS 158.1413, the essential skills domain standards for all grade bands shall be utilized to design and implement essential workplace ethics programs and to ensure that all students in elementary, middle, and high school receive essential workplace ethics instruction.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Career Studies", August 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, January 13, 2020)**

**780 KAR 2:040. Live work projects.**

RELATES TO: KRS ~~156.802(3)~~~~[454B-025(3)]~~  
STATUTORY AUTHORITY: KRS ~~156.802(3), 156.852~~~~[454B-025(3)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~156.802(3)~~~~[454B-025(3)]~~ authorizes ~~[gives]~~ the Kentucky Department of Education to have~~[Office of Career and Technical Education]~~ ~~[the]~~ responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers. This administrative regulation establishes the procedures for accepting live work projects in a Kentucky TECH facility.

Section 1. Definitions. (1) "Kentucky TECH" means the system of state-operated secondary technical education programs.

(2) "Live work" means a project, which meets a curriculum requirement, completed for an individual or organization.

Section 2. A Kentucky TECH school may accept live work projects if the administrative and instructional staffs deem them appropriate for training purposes.

## **405 KAR 7:040. General obligations of operators and permittees.**

RELATES TO: KRS 350.050, 350.057, 350.060, 350.410, 350.450

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.057, 350.060, 350.090, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations. This administrative regulation sets forth the basic requirements and general obligations of operators and permittees. This administrative regulation prescribes certain methods of disposal of materials and other obligations of operators and permittees.

Section 1. General Requirements for Permits and Exploration Approvals. (1) Requirement to obtain a permit. A person or operator shall not engage in surface coal mining and reclamation operations without first having obtained from the cabinet a valid permit covering the area of land to be affected.

(2) Requirement to obtain exploration approval. Subject to the provisions of 405 KAR 8:020, a person or operator shall not engage in coal exploration operations without first having:

(a) Filed a written notice of intention to explore; or

(b) Obtained written approval from the cabinet.

(3) Requirement to comply with permit or exploration approval. A permittee or person issued a coal exploration approval shall comply with all terms and conditions placed upon the permit or exploration approval by the cabinet and with all plans submitted as part of the application approved by the cabinet.

Section 2. Disposal of Materials. A person or operator engaged in surface coal mining and reclamation operations shall not throw, pile, dump, or permit the throwing, piling, dumping, or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350, nor place these materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit the materials to go beyond or outside of an area land which is under permit and for which bond has been posted pursuant to KRS Chapter 350.

Section 3. Unsafe Practices. (1) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations that result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(2) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that causes, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources.

(3) (a) Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall:

1. Immediately notify the persons whose life, health, or property are so threatened;

2. Take any and all reasonable actions to eliminate the conditions creating the emergency; and

3. Immediately provide notice of the emergency conditions to the cabinet, to local law enforcement officials, and to appropriate local government officials.

(b) Any emergency action taken by an operator pursuant to this subsection shall not relieve

the operator of other obligations pursuant to 405 KAR Chapters 7 through 24 or of obligations under other applicable local, state, or federal laws and regulations.

Section 4. Hazard Classifications for Impoundments. (1) For proposed new sedimentation ponds or other new impoundments, the responsible design engineer shall determine the structure hazard classification according to the classification descriptions. For structures classified (B) - moderate hazard or (C) - high hazard, the operator shall obtain a permit from the cabinet pursuant to KRS 151.250 and 405 KAR Chapters 7 through 24, prior to beginning construction.

(2) The following structure hazard classifications shall be established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

(a) Class (A), low hazard: This class shall include structures located:

1. Where failure would cause loss of the structure itself but little or no additional damage to other property.

2. Generally in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

(b) Class (B), moderate hazard: This class shall include structures located:

1. Where failure may cause significant damage to property and project operation, but loss of human life is not envisioned.

2. Generally in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruptions of use or service of relatively important public utilities.

(c) Class (C), high hazard:

1. This class shall include structures located where failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads.

2. This classification shall be used if failure would cause probable loss of human life.

(3) The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the site and probable future development. Establishment of minimum criteria shall not preclude provisions for greater safety, if the engineer determines that these provisions are necessary. Considerations other than those mentioned in the above classifications may require that the established minimum criteria be exceeded, if the cabinet determines that it is necessary for greater safety. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the design drawings.

(4) If structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure shall be considered in assigning the structure classification of the upstream structure.

Section 5. Reports Required. The operator shall submit such reports, documentation, certifications, or other information as the cabinet may require, or as may be required by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 6. Coal Exploration. (1) Any person conducting coal exploration shall either file a Notice of Intention to Explore or obtain approval of the cabinet as required by 405 KAR 8:020.

(2) The coal exploration performance standards in 405 KAR 20:010 shall apply to coal exploration that substantially disturbs the natural land surface.

Section 7. Compliance with 405 KAR Chapters 7 through 24 shall not relieve any person or operator from the obligation to comply with other applicable administrative regulations of the cabinet.

Section 8. The requirement to restore the approximate original contour of the land shall apply regardless of any reconstruction of any existing structure allowed.

Section 9. Certifications by Licensed Professional Engineers. (1) A document required to be certified shall be rejected by the cabinet as incomplete if its accuracy is not so attested.

(2) Certification by a qualified licensed professional engineer as required by 405 KAR Chapters 7 - 24 means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the licensed professional engineer or supervision of the licensed professional engineer's employees or subordinates. This certification shall not be construed to constitute a warranty or guarantee.

(3) Certification of maps, plans, and drawings. If 405 KAR requires that maps, plans, and drawings be certified by a qualified licensed professional engineer, the licensed professional engineer shall certify:

(a) That the information or documentation contained in the map, plan, or drawing is correct as determined by accepted engineering practices; and

(b) That the map, plan or drawing includes all the information required by KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(4) Certification of designs. Where 405 KAR Chapters 7 – 24 requires that a qualified licensed professional engineer design and certify a facility, he or she shall certify that:

(a) The design is in accordance with accepted engineering practices and recognized professional standards;

(b) The design complies with the design requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24; and

(c) Provided the facility is properly constructed, operated, and maintained, the design is adequate for the facility to meet the applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 - 24 insofar as such performance can reasonably be predicted by accepted engineering practices.

(5) Certification of construction.

(a) Where 405 KAR Chapters 7 - 24 requires that a qualified licensed professional engineer certify that a facility was constructed in accordance with the design approved by the cabinet, he or she shall certify:

1. That adequate inspections were conducted by the qualified licensed professional engineer or by persons under his or her supervision;

2. That the construction was performed in accordance with accepted construction practices; and

3. Either that the facility was constructed in accordance with the design approved by the cabinet, or that the facility was constructed in accordance with the design approved by the cabinet except for certain minor deviations which will not adversely affect the performance of the facility nor render the facility in violation of KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(b) Any minor deviations shall be described in the certification document and the effect of the deviations upon the performance of the facility shall be explained.

(c) As-built drawings shall be submitted as a part of the certification.

(6) Certification of maintenance. Where 405 KAR Chapters 7 - 24 requires that a qualified licensed professional engineer certify the maintenance of a structure, he or she shall certify that:

(a) An inspection of the structure was conducted by the licensed professional engineer or by a person under his or her supervision; and

(b) Based on that inspection, the licensed professional engineer has determined that the structure has been maintained as required by 405 KAR Chapters 7 - 24. (8 Ky.R. 1469; eff. 1-6-1983; Crt eff. 7-3-2018; 46 Ky.R. 1318, 2246; eff. 5-5-2020.)

## **405 KAR 7:050. Coal processing waste disposal sites.**

RELATES TO: KRS 151.125, 151.297, 224.10-100, 224.10-410, 350.020, 350.090(1), 350.420

STATUTORY AUTHORITY: KRS 151.125, 224.10-410, 350.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.020 authorizes the Energy and Environment Cabinet to promulgate administrative regulations that are necessary to accomplish the purpose of KRS Chapter 350. KRS 151.125 authorizes the cabinet to promulgate administrative regulations concerning flood control, water resources, requirements for dams or reservoirs, and waste planning and management activities. KRS 224.10-410 requires the secretary to promulgate administrative regulations concerning the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This administrative regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because these facilities are not otherwise adequately regulated. This administrative regulation provides for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This administrative regulation shall apply to all coal processing waste disposal sites, such as dams, waste impoundments, or waste banks that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1) Operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the cabinet regional office:

(a) All existing information currently available to the operator or owner, including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site that includes moisture content and particle size gradation. This submittal shall also include copies of plans submitted to or approved by the Mine Safety and Health Administration (MSHA). If these plans include all of the information required by this paragraph, then submittal of copies of the plans shall suffice. If information required by this paragraph has already been submitted to the cabinet as a part of a permit application, the operator or owner shall notify the cabinet regional office in writing and shall not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility, as applicable, including a map showing the location of the facility.

(2) (a) Analyses and descriptions submitted under subsection (1)(a) of this section shall be based upon current information available to the operator or owner.

(b) If the failure of the facility could cause damage to life or property or injurious effects on the environment of the Commonwealth, the cabinet shall require the operator or owner to submit additional plans and analyses or to conduct the investigations and testing of materials that are necessary to determine the stability of the facility.

(c) These investigations and tests may include seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding



water, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with 405 KAR 16:100 or 405 KAR 18:100.

(2) All other coal processing waste disposal sites shall comply with 30 C.F.R. 77.214 as amended at 36 Fed. Reg. 13,143 (1971) and 30 C.F.R. 77.215 as amended at 40 Fed. Reg. 41,776 (1975), except a facility shall not be constructed in a manner that may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facility.

(3) Those portions of structures that have already been constructed and structures that have been completed shall not be reconstructed unless reconstruction is necessary to ensure stability of the facility to:

- (a) Eliminate potential hazards to life or property; or
- (b) Prevent injurious effects on the environment of the Commonwealth.

(4) This administrative regulation shall not be construed as relieving an operator from the obligation to comply with any other provision of 405 KAR Chapters 7 - 24, including compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. The cabinet may require operators or owners of coal processing waste disposal sites to revise the facility design and to implement remedial measures if necessary to comply with Section 3 of this administrative regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this administrative regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified licensed professional engineer or by qualified persons under the engineer's supervision. The facility shall be certified within two (2) weeks of each inspection by the responsible qualified licensed professional engineer as having been constructed in accordance with the design approved by the cabinet under 405 KAR Chapters 7 through 24. If the cabinet has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA. (9 Ky.R. 634; 1148; eff. 5-4-1983; Crt eff. 7-3-2018; 46 Ky.R. 1321, 2248; eff. 5-5-2020.)

## **405 KAR 8:010. General provisions for permits.**

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 350.500-350.521, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 470x-6, 661-667e16, 668-668d, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation establishes provisions for permits to conduct these operations, including the conditions for which permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to im-providently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions regarding permits, and surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit pursuant to 405 KAR Chapter 8.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations or underground only operations shall:

1. File a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

2. Not begin the operation until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit pursuant to Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted pursuant to prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted pursuant to a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet pursuant to 405 KAR Chapters 7 through 24.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit pursuant to Section 23 of this administrative regulation, but shall not begin surface

coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations pursuant to a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955; and

(b) Applicable requirements of the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; the Fish and Wildlife Coordination Act of 1934, 16 U.S.C. 661-667d; the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703-712; the National Historic Preservation Act of 1966, (54 U.S.C. 300101 – 307108; and the Bald Eagle Protection Act of 1940, 16 U.S.C. 668-668d, as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as established in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties agree are appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit may submit to the cabinet a Preliminary Application, MPA-00.

(2) If the permittee chooses to submit a Preliminary Application, the Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area, shadow area, and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) Pursuant to KRS Chapter 350 and 405 KAR Chapters 7 – 24, personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection pursuant to Section 8(8) of this administrative regulation.

(b) The application and copies shall be prepared, assembled, and submitted with attachments, plans, maps, certifications, drawings, calculations, or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations.

(c) The following forms shall be submitted by an applicant:

1. Permittee Information for a Mining Permit, MPA-01;

2. Operator Information for a Mining Permit, MPA-02;

3. Technical Information for Mining Permit, MPA-03;

4. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B.;

5. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03.20.1.C.;
6. Update of Permittee or Operator Information, MPA-05;
7. Change of Corporate Owners, Officers or Directors, MPA-06;
8. Application to Transfer a Mining Permit, MPA-07;
9. Revision Application to Change Operator, MPA-08;
10. Application for Renewal of a Mining Permit, MPA-09;
11. Application for a Coal Marketing Deferment, MPA-10; and
12. Minor Field Revision Application Form, SME 80.

(d) The application shall be complete with respect to all information required by 405 KAR Chapters 7 - 24 and include, at a minimum for:

1. Surface mining activities, all the applicable information required pursuant to 405 KAR 8:030;
2. Underground mining activities, all the information required pursuant to 405 KAR 8:040; and
3. Special types of surface coal mining and reclamation operations, all the information required pursuant to 405 KAR 8:050.

(e) An application shall not be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information established in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

- (a) Names of persons or organizations that collected and analyzed the data;
- (b) Dates of the collection and analyses; and
- (c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address, and position of officials of each private or academic research organization or governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either the applicant or some other person to serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If information marked on the preliminary map required pursuant to Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information established on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area, shadow area, and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation.

(a) If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted.

(b) An acreage fee shall not be required for surface areas overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or the applicant's authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the:

1. Application is submitted to the cabinet; or

2. Applicant receives the notification from the cabinet pursuant to Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement and that written objections to the application shall be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, in accordance with this section that shall consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum:

(a) The name and business address of the applicant;

(b) A map or description that shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used;

(c) The location where a copy of the application shall be available for public inspection pursuant to subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted pursuant to Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice pursuant to 405 KAR 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted pursuant to Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including the:

1. USDA Soil Conservation Service State Conservationist;

2. Local U.S. Army Corps of Engineers district engineer;

3. National Park Service;

4. U.S. Department of Fish and Wildlife and Kentucky Department of Fish and Wildlife Resources; and

5. State historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided pursuant to Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within the public agency's area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or could be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection pursuant

to Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting at the conference;  
(b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and  
(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant pursuant to Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted as established in paragraphs (a) through (c) of this subsection.

(a) If requested pursuant to subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet shall arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

1. The conference shall be conducted by a representative of the cabinet, who shall accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required pursuant to 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet.

(1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in



which mining shall occur.

1. The application shall be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884.

2. This copy is not required to include confidential information exempt from disclosure pursuant to subsection (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or could be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 400 KAR 1:110, Section 9.

(d) Confidential information shall be limited to information:

1. That pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and

2. On the nature and location of archaeological resources on public land and Indian land as required pursuant to the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.

3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incom-

pleteness.

4. If, after ten (10) working days, the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b)1. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied.

2. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods established in Section 16 of this administrative regulation, the cabinet shall either notify the applicant:

(a) Of the cabinet's decision to issue or deny the application; or

(b)1. In writing, by certified mail, return receipt requested, or by registered mail, upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies.

2. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, or any other state's laws or administrative regulations pursuant to SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state in which violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and administrative regulations pursuant to SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is established in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pur-

suing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required pursuant to subparagraph (1) of this paragraph.

(d) Any permit that is issued on the basis of proof submitted pursuant to paragraph (a)1. of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal established in paragraph (a)2 of this subsection, shall be conditionally issued.

(e)1. If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator established in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued.

2. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 400 KAR 1:110, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(3) and 3(2), or 405 KAR 8:040, Sections 2(3) and 3(2).

Section 14. Criteria for Application Approval or Denial. An application for a permit, revision (as applicable), or amendment of a permit shall not be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information established in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished in accordance with the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed pursuant to the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area and shadow area;

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations pursuant to 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2), or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as established in 405 KAR 24:040, Section 2(5);

(5)(a) The proposed operations shall not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as established in 405 KAR

24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that additional protection measures are not necessary;

(6) For operations involving the surface mining of coal in which the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required pursuant to 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of a nature and duration and with resulting irreparable damage to the environment to indicate an intent not to comply with SMCRA or KRS Chapter 350;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements established in 405 KAR 16:210 and 405 KAR 18:220 for approval of a long-term, intensive agricultural postmining land use;

(12) The applicant may reasonably be expected to submit the performance bond or other equivalent guarantee required pursuant to 405 KAR Chapter 10 prior to the issuance of the permit;

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required pursuant to 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544);

(17) The applicant has not forfeited any bond pursuant to KRS Chapter 350. If the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended, or terminated pursuant to KRS Chapter 350. If the applicant has had a permit revoked, suspended, or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to

him or her;

(19) The operation shall not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

(20) The surface coal mining operation shall not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as established in 405 KAR 24:040; or

(21) For a proposed remaining operation that the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated that the proposed site of the operation is a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information established in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(c) of this administrative regulation of a major revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application for a minor revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application.

a. The timeframes for review shall be:

(i) Fifteen (15) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation; and

(ii) Thirty (30) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

b. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) or thirty (30) working day period available to the department; and

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods established in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The regional office manager of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet approves the application, the cabinet shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of the decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet pursuant to this subsection shall be specifically established in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall constitute knowledge and acceptance of the conditions established in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been established in the permit. (1) General. The general conditions established in paragraphs (a) through (c) of this subsection shall apply to a permit issued by the cabinet.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(b) The permittee shall conduct all surface coal mining and reclamation operations as established in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken.

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted pursuant to 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and
2. Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

1. Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;
2. Immediate implementation of measures necessary to comply; and
3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures established in the permit as necessary to prevent significant, imminent environmental harm that could affect the health or safety of the public; and
2. Utilizing any methods established in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced pursuant to the permit for sale, transfer, or use, in the manner required

by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted pursuant to the permit or after an order for cessation and immediate compliance is issued pursuant to 405 KAR 12:020, Section 3, for operations conducted pursuant to the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has not been a change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee pursuant to 405 KAR 8:030, Section 2(1)(c), or 405 KAR 8:040, Section 2(1)(c); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(1)(c).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued pursuant to 405 KAR Chapter 8 during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) The cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 400 KAR 1:110, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations established in the existing application and approved pursuant to the current permit;

(b) If a revision is required by an order issued pursuant to Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required pursuant to 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as established in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of a scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that could be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. A variance to approximate original contour requirements;

4. Construction or relocation of a road, if the construction or relocation could adversely af-



fect the interests of persons other than the surface owner;

5. A change that may adversely affect significant fish and wildlife habitats or endangered species;

6. A proposed experimental practice;

7. A change that may cause a major impact on the hydrologic balance;

8. An incidental boundary revision that affects a new watershed; and

9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms MPA-01 and MPA-03 pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision pursuant to subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision established in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal.

(b) If a proposed minor revision is actually a major revision pursuant to Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c)1. The cabinet shall notify, in writing, those persons that could have an interest or could be adversely affected by the proposed change.

2. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department, unless the number of persons that potentially could have an interest or could be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine if the proposed minor revision is a major revision and shall not be processed pursuant to this paragraph. The following proposals shall be a minor field revision:

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (pursuant to paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3.a. A proposal to leave roads as permanent, except proposals involving roads to im-

poundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted.

b. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:

- a. The drainage area to the structure shall remain the same as the original design;
- b. The proposed location shall not cause short-circuiting of the structure; and
- c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and

b. The diversions have previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. A change in tree species is not involved unless concurrently approved pursuant to subparagraph 9 of this paragraph;

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer-mounted unit;

b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, or a coal stockpile if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;

22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;

23. A proposal to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;

24.a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and

(vii) An additional performance bond in the amount of \$5,000 has been filed by the permittee.

b. The regional administrator, as established in paragraph (b) of this subsection, may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits;

25. Except as established in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. As established in 405 KAR 7:040, Section 5, structure has a hazard classification of B or C;

b. Impoundment is a developed water resource land use;

c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or

e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;

26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains an MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and

27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.

2. The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin

at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it:

1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;
2. Is contiguous to the current permit area;
3. Is within the same watershed as the current permit area;
4. Is required for an orderly continuation of the mining operation;
5. Involves mining of the same coal seam or seams as in the current permit;
6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;
7. Does not involve a property on which mining is prohibited pursuant to KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining pursuant to 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;
8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;
9. Does not constitute a change in the current method of mining; and
10. Shall be reclaimed in conformity with the current reclamation plan.

(g) Extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances shall be minor revisions.

(4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved pursuant to this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.

(c)1. Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection.

2. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change.

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1)(a) through (d) and (h) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(3) and (4) of those administrative regulations; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by 405 KAR 8:030, Section 3 and 8:040 shall be required.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required pursuant to Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

a. The permit number;

b. The geographic location of the permit area;

c. The name and business address of the permittee;

d. A statement that the permittee proposes to change the operator approved in the permit;

e. The names and business addresses of the currently approved operator and the proposed operator;

f. The cabinet address to which written comments may be sent pursuant to paragraph (f) of this subsection; and

g. The time available for submission of the comments.

(f) A person whose interests are or could be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator pursuant to the criteria in Section 13(4) of this administrative regulation; and

2. Meets the other applicable requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period pursuant to paragraph (f) of this subsection.

2. A period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period established in this paragraph, then the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(7) Fees. An application for a revision shall include a basic fee, except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for shadow area that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to 405 KAR Chapter 8 shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. An application for renewal of a permit shall be submitted within the time established by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance with this section, and shall include:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same pursuant to Section 8 of this administrative regulation;

(c) Evidence that liability insurance pursuant to 405 KAR 10:030, Section 4, for the proposed period of renewal;

(d) A renewal fee of \$750;

(e) Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established pursuant to Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards pursuant to KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet requires pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining if to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review established in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted pursuant to any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession and the applicant shall submit:

1. The name and address of the existing permittee and the permit number;
2. A brief description of the proposed action requiring approval;
3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and
4. A processing fee of \$750;

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent pursuant to subsection (3) of this section; and

(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or could be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria established in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets all requirements necessary to ensure compliance with KRS Chapter 350 or 405



KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice established in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor.

(a) All rights and liabilities pursuant to the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit.

(b) The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit pursuant to KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted pursuant to a permit.

(a) A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

(b) A successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet shall release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability pursuant to KAR Title 405 for the reclamation of the areas affected by all prior permittees.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension to an area covered by a permit shall not be approved, as established in Sections 20 (permit revisions) or 21 (permit renewals) of this administrative regulation.

(a) An extension shall be made by application for another permit.

(b) If the permittee desires to add the new area to an existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405 amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits pursuant to KAR Title 405.

(2) A fee for an amendment to existing permits shall be submitted to the cabinet as established in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that could be adversely affected may request a hearing on the reasons for the final decision. The request shall be in accordance with 400 KAR 1:110, Section 8.

(2) Any applicant or any person with an interest that could be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to:

(a) Judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) An action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits established in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Pursuant to the violation review criteria of the cabinet upon permit issuance:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, pursuant to the violations review criteria of the regulatory program upon permit issuance an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, pursuant to subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit pursuant to subsection (4) of this section.

(4) Rescission procedures. If the cabinet, pursuant to subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet pursuant to subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet pursuant to subsection (2) of this section was erroneous;
  2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee;
  3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying with the responsible agency; or
  4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;
- (b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations pursuant to the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and
- (c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing. A formal hearing shall be in accordance with 400 KAR 1:110, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Preliminary Application", MPA-00, October 2017;
- (b) "Permittee Information for a Mining Permit", MPA-01, August 2010;
- (c) "Operator Information for a Mining Permit", MPA-02, August 2010;
- (d) "Technical Information for a Mining Permit", MPA-03, October 2017;
- (e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;
- (f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;
- (g) "Update of Permittee or Operator Information", MPA-05, August 2010;
- (h) "Change of Corporate Owners, Officers or Directors", MPA-06, October 2017;
- (i) "Application to Transfer a Mining Permit", MPA-07, June 2013;
- (j) "Revision Application to Change Operator", MPA-08, August 2010;
- (k) "Application for Renewal of a Mining Permit", MPA-09, August 2017;
- (l) "Application for a Coal Marketing Deferment", MPA-10, August 2017
- (m) "Minor Field Revision Application Form", SME 80, revised August 2010; and
- (n) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (8 Ky.R. 1483; eff. 1-6-1983; Am. 15 Ky.R. 414; 1057; eff. 12-13-1988; 1855; eff. 6-28-1989; 16 Ky.R. 421; 775; 1170; 1343; eff. 11-22-1989; 17 Ky.R. 2784; 3161; eff. 5-22-1991; 18 Ky.R. 1912; 2542; 2774; eff. 4-3-1992; TAm eff. 8-9-2007; 36 Ky.R. 2360; 37 Ky.R. 390; 689; eff. 9-2-2010; 40 Ky.R. 415; 1046; eff. 11-7-2013; TAm eff. 7-6-2016; 44 Ky.R. 595, 1280; eff. 1-5-2018; Crt eff. 7-3-2018; 46 Ky.R. 1323, 2249; eff. 5-5-2020.)

## **405 KAR 8:030. Surface coal mining permits.**

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for granting a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the permit applicant submit to the cabinet after approval by the Mine Safety and Health Administration (MSHA), a: (1) Copy of the final approved design plans for impounding structures; (2) Copy of all correspondence with MSHA; (3) Copy of technical support documents requested by MSHA; and (4) Notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements established in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as established in 405 KAR 8:010.

(3) This administrative regulation establishes information required to be contained in each application for a permit to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) An application shall contain the following information, except that the submission of a Social Security number shall be voluntary:

(a) A statement identifying if the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b) The name, address, telephone number and, as applicable, Social Security number, and employer identification number of the:

1. Applicant;
2. Applicant's resident agent; and
3. Person who will pay the abandoned mine land reclamation fee;

(c) For each person who owns or controls the applicant:

1. The person's name, address, Social Security number, and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

4. Each additional name and identifying number, including employer identification number,

federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

1. Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(e) The names and addresses of:

1. Every legal or equitable owner of record of the property to be mined;

2. The holders of record of any leasehold interest in the property to be mined; and

3. Any purchaser of record, under a real estate contract, of the property to be mined;

(f) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area;

(g) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval;

(h) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter; and

(i) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands that are contiguous to the area to be covered by the permit.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (1)(a) through (d) of this section.

(3) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(4) The permittee shall submit updates of the information established in paragraphs (a) through (c) of this subsection in writing to the cabinet within thirty (30) days of the effective date of any change. An update shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection. This information shall include:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) If the permittee or other persons established in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. (1) Each application shall contain:

(a) A statement identifying if the applicant or any subsidiary, affiliate, or persons controlled

by or under common control with the applicant has:

1. Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

2. Forfeited a coal mining performance bond or similar security deposited in lieu of bond;

(b) If any suspension, revocation, or forfeiture as established in paragraph (a) of this subsection has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3. The current status of the permit, bond, or similar security involved;

4. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5. The current status of these proceedings; and

(c) For any violation of a provision of SMCRA; federal regulations enacted pursuant to SMCRA; KRS Chapter 350 and administrative regulations adopted pursuant thereto; any other state's laws or regulations under SMCRA; any federal law, rule, or regulation pertaining to air or water environmental protection; or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number; the dates of issuance of the violation notice and MSHA number; the name of the person to whom the violation notice was issued; and the name of the issuing regulatory authority, department, or agency;

2. A brief description of the particular violation alleged in the notice;

3. The final resolution of each violation notice, if any; and

4. For each violation notice that has not been finally resolved:

a. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation;

b. The current status of the proceedings and of the violation notice; and

c. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, if necessary, the applicant shall update the application to indicate what change, if any, has occurred in the information previously submitted under subsection (1) of this section.

(3) Upon request by a small operator, the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section who are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and if that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information identifying if the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the iden-

tification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include a description of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The description required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) According to historical databases, the cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information that has been collected, analyzed, and submitted in the detail and manner sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation that will be implemented during the mining and reclamation process to assure protection of the hydrologic balance or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures, and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) if reclamation as required by 405 KAR can be accomplished and if the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this



administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, shall demonstrate if the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet if this information is:

1. Needed in preparing the cumulative impact assessment; and
2. Available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation, or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

- (a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or
- (b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area that shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material that has been collected using sampling techniques appropriate for the material type.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined.

2. Where aquifers located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata that have a potential to produce acid drainage and to determine the area and vertical extent of aquifers that could be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling established in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information;

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata that have a potential to produce acid or toxic drainage; and

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(2) Collection of geologic information from the permit area as required in this subsection

may be waived in whole or in part if:

(a)1. The applicant can demonstrate through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet and is made a part of the permit application; and

(b) The cabinet provides a written statement granting a waiver.

(3) The application shall contain a description of the geology of the proposed permit area and adjacent area that shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers could be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers; and

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers that could be adversely affected by the mining operation.

(4) If necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet shall require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata that could be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and if possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage, or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, pH, dissolved iron, dissolved manganese, acidity, alkalinity, and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information required by subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require groundwater information in addition to that established in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments, or other surface water bodies in the permit and adjacent area that are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and if possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership if appropriate, of all streams, lakes, impoundments, and other surface water bodies that receive run-off from watersheds that will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds that will be disturbed by the mining operation and could contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges that could be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds that will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, total suspended solids, pH, total iron, total manganese, acidity, alkalinity, and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require surface water information in addition to that established in subsections (2), (3), and (4) of this section, including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities could proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or

adjacent area used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) Upon cabinet request, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperature ranges.

(2) The cabinet shall request additional data if necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) If the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) If a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required if the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 – 1544), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

- (a) The Corps of Engineers Wetlands Delineation Manual;
- (b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;
2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;
3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;
4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or
5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if fish and wildlife information is necessary, and the scope of information needed, shall be made in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine if lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland if the applicant can demonstrate one (1) of the following:

- (a) The land has not been historically used as cropland;
- (b) The slope of the land is ten (10) percent or greater;
- (c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation that show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area could be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and if the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service to decide on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described; and

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(2) The application shall state if the proposed permit area has been previously mined, and, if so and, if available, the:

(a) Type of mining method used;

(b) Coal seams or other mineral strata mined;

(c) Extent of coal or other minerals removed;

(d) Approximate dates of past mining; and

(e) Uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or

which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters that will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area; and

(l) Other relevant information required by 30 C.F.R. 779.24(l).

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or that will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area; and

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the requirements es-

tablished in subparagraphs 1. through 3. of this paragraph.

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, if impractical, at locations and in a manner sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information established in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application that are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet if there is a material change. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as established in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum a narrative:

(a) Description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) Explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as established in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas pursuant to paragraphs (a) through (c) of this subsection.

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;



3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning, and loading area;
5. Each topsoil, spoil, coal waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150 and 16:190, Section 3, and a description of the contingency plans that have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Chapter 85), the Clean Water Act (33 U.S.C. Chapter 26), and other applicable air

and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations that the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure that describe the structure's current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, that the structure meets the performance standards of 405 KAR Chapters 16 through 20.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

- (a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;
- (b) A construction schedule that shows dates for beginning and completing interim steps and final reconstruction;
- (c) Provisions for monitoring the structure to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and
- (d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee shall meet with regard to:

- (a) Ground vibration and air blast;
- (b) The bases for the ground vibration and air blast limitations; and
- (c) The methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and air blast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Office of Mine Safety and Licensing.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including:

- (a) The character of bedrock and any adverse geologic conditions in the disposal area;
- (b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including strength parameters, pore pressures, and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include:

(a) The number, location, and depth of borings or test pits that shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts that shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

(b) A report of appropriate geotechnical analysis, if approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220;

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220; and

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that could be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may, pursuant to 30 C.F.R. 780.31, require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

- (1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or
- (2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as established in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate that protective measures are not necessary for the operation to:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);
2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;
3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;
4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;
5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and
6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures established under subsection (1) of this section. The design shall be prepared in a manner and detail to clearly depict, as appropriate, calculations, maps, drawings, and written explanations necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail necessary to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow; and
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage

conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers that are not currently being used for water supply but have the potential to be developed as a water supply source; and

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on if the proposed surface mining activities could proximately result in contamination, diminution, or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate use upon application.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16 and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

- (f) Describe the operation and maintenance requirements for each structure; and
  - (g) Describe the timetable and plans to remove each structure, if appropriate.
- (2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16.100.
- (3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.
- (4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 16:140.
- (5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to:
- (a) The number, location, and depth of borings and test pits determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions;
  - (b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that could affect the particular dam, embankment, or reservoir site;
  - (c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and
  - (d) Consideration of the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.
- (6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activity, the application shall

contain an air pollution control plan that includes:

- (1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and
- (2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved as practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats established under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;
2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;
3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;
4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or
5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if a protection and enhancement plan is necessary shall be made in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities that could be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration that has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (8 Ky.R. 1494; eff. 1-6-1983; 10 Ky.R. 796; eff. 4-23-1984; 11 Ky.R. 1803; 12 Ky.R. 158; eff. 8-13-1985; 900; 1288; eff. 2-4-1986; 15 Ky.R. 1870; eff. 6-28-1989; 17 Ky.R. 2800; 3389; eff. 5-22-1991; 18 Ky.R. 2992; 3450; 19 Ky.R. 24; eff. 6-24-1992; 24 Ky.R. 675; 1313; 2628; eff. 6-10-1998; TAm eff. 8-9-2007; 41 Ky.R. 567; 1078; 1314; eff. 1-5-2015; TAm eff. 7-6-2016; Crt eff. 7-3-2018; 46 Ky.R. 1336, 2261; eff. 5-5-2020.)



## **405 KAR 10:050. Bond forfeiture.**

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.130, 350.131, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to ensure that satisfactory reclamation is accomplished. This administrative regulation establishes the procedures and criteria by means of which a bond may be forfeited to the cabinet. This administrative regulation establishes that certain violations of KRS Chapter 350 and administrative regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This administrative regulation establishes that a hearing may be requested before forfeiture can be effected. This administrative regulation establishes the method to determine the amount of bond forfeiture. This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this administrative regulation.

(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform the measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) Except as established in subsection (2) of this section, if forfeiture of the bond is required by Section 3 of this administrative regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 400 KAR 1:110, Section 9; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, enter a final order of forfeiture and proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 400 KAR 1:110, Section 5.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. The funds shall be deposited in an appropriate account for the payment of these costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.

(5) Return of unused forfeited bond funds for interim or permanent program permit area overlapped by permanent program permit area. If the cabinet has not completed the reclamation plan on a permit area under 30 C.F.R. Part 715 for which the bond was forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area and any related off-permit disturbances are entirely contained within the permit area of a subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet shall retain the funds from the forfeited bond until the entire overlapped permit area and any related off-permit disturbances have been disturbed by the overlapping permittee and then shall return the unused funds to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set off the proceeds under state law.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or 405 KAR Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this administrative regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (if all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit.

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) If a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment. (8 Ky.R. 1521; eff. 1-6-1983; 15 Ky.R. 451; 1073; eff. 12-13-1988; 20 Ky.R. 132; 544; eff. 9-22-1993; TAm eff. 5-4-2018; Crt eff. 7-3-2018; 46 Ky.R. 1346, 2271; eff. 5-5-2020.)

## **405 KAR 16:100. Permanent and temporary impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.420, 350.455, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments which is not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application in accordance with 405 KAR 8:030, Section 34(3).

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined by KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet in accordance with 405 KAR Chapters 7 through 24. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a)1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2. 2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design shall ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream

toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based on site and slope stability, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 16:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet pursuant to subsection (2) of this section.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments that have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined by KRS 151.100(12); and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways, which shall be designed and constructed to safely pass the design precipitation event established in

this subsection unless the cabinet requires a design based on a larger precipitation event due to site specific conditions. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event established in this subsection.

(a) Except as established in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or
2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hours precipitation event.

(c) Class B and C structures and all permanent "dams," as defined by KRS 151.100(12) shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerrodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness, or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines and notifies the permittee in writing that engineering inspection and certification are necessary to ensure public health and safety or environmental conditions.

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional ex-

amination within a quarter are required based on evidence of structural weakness or hazardous conditions. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

- (a) Cut vegetative growth where necessary to facilitate inspection and repairs;
- (b) Clean any ditches and spillways; and
- (c) Remove any combustible material present on the surface, other than that used for stability, such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon compliance with subsections (1) through (6) of this section.

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water shall be suitable on a permanent basis for its intended use and, after reclamation, shall comply with applicable state and federal water quality standards, and discharges from the impoundment shall comply with applicable effluent limitations and shall not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level shall be sufficiently stable and be capable of supporting the intended use.

(4) Final grading shall provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment shall not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment shall be suitable for the approved postmining land use. (8 Ky.R. 1537; eff. 1-6-1983; 15 Ky.R. 460; 1076; eff. 12-13-1988; 24 Ky.R. 719; 2660; eff. 6-10-1998; Crt eff. 7-3-2018; 46 Ky.R. 1348, 2272; eff. 5-5-2020.)

## **405 KAR 16:210. Postmining land use capability.**

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465 requires the cabinet to promulgate administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation establishes requirements for restoring land use capability after completion of surface mining activities and specific criteria for approval of postmining land uses that differ from the premining land use.

Section 1. General. (1) Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses that the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

(a) Cropland;

(b) Pastureland;

(c) Forest land;

(d) Residential;

(e) Industrial or commercial;

(f) Recreation;

(g) Fish and wildlife;

(h) Developed water resources; and

(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses that the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area. More than one (1) land use may exist within a proposed permit boundary.

(2)(a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved that is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regula-



tion:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use; or

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. The limitations in this subsection shall apply to permits issued after November 26, 1991. Portions of the permit area with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050, Section 4(3).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses shall be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law. (8 Ky.R. 1553; eff. 1-6-1983; 18 Ky.R. 431; 1875; 2243; eff. 11-26-1991; Crt eff. 7-3-2018; 46 Ky.R. 1351, 2274; eff. 5-5-2020.)

## **405 KAR 18:100. Permanent and temporary impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.151, 350.420, 350.455, 350.465, 30 C.F.R. 77.216, 77.216-3, Parts 730-733, Part 735, 817.49, Part 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.151(1), 350.465(2), 30 C.F.R. Parts 730-733, Part 735, 817.49, Part 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the Energy and Environment Cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for underground mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments, which are not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application after the plan has been approved by MSHA.

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100(12), shall comply with 405 KAR 7:040, Section 4 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified licensed professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet in 405 KAR Chapters 7 through 24. The qualified licensed professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a) 1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement. Upon request, the minimum height increase may be

reduced if the material used and the design shall ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based on site and slope stability, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 18:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet pursuant to subsection (2) of this section.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 18:190, Section 4.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments that have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

- a. The structure has been recently verified as being a Class A-low hazard structure;
- b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and
- c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways that shall be designed and constructed to safely pass the design precipitation event specified in this subsection, unless the cabinet requires a design based on a larger precipitation event due to site specific conditions. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or
2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hour precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100(12) shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified licensed professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the design and construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified licensed professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines and notifies the permittee in writing that engineering inspection and certification are necessary to ensure public health and safety or environmental conditions.

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examinations within a quarter are required based on evidence of structural weakness or hazardous conditions. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Kentucky Emergency Management. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

- (1) Cut vegetative growth where necessary to facilitate inspection and repairs;
- (2) Clean any ditches and spillways; and
- (3) Remove any combustible material present on the surface, other than that used for stability such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use. (8 Ky.R. 1566; eff. 1-6-1983; 15 Ky.R. 485; 1085; eff. 12-13-1988; 24 Ky.R. 741; 2672; eff. 6-10-1998; Crt eff. 7-3-2018; 46 Ky.R. 1353, 2274; eff. 5-5-2020.)

## **405 KAR 18:220. Postmining land use capability.**

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, Part 735, 817.133, Part 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.020, 350.028(1), (5), 350.151, 350.465, 30 C.F.R. Parts 730-733, Part 735, 817.133, Part 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation establishes requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses that differ from the premining land use.

Section 1. General. (1) Prior to the final release of the performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or  
(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

- (a) Cropland;
- (b) Pastureland;
- (c) Forest land;
- (d) Residential;
- (e) Industrial/commercial;
- (f) Recreation;
- (g) Fish and wildlife;
- (h) Developed water resources;
- (i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; except that more than one (1) land use can exist within an area to be affected by surface operations and facilities.

(2)(a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. The limitations in this subsection shall apply to permits issued after November 26, 1991. Portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses shall be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law. (8 Ky.R. 1583; eff. 1-6-1983; 18 Ky.R. 449; 1880; 2254; eff. 11-26-1991; Crt eff. 7-3-2018; 46 Ky.R. 1356, 2277; eff. 5-5-2020.)

## **405 KAR 20:040. Prime farmland.**

RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards specifically including special requirements for the protection of prime farmland. This administrative regulation specifies special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

Section 1. Scope and Purpose. This administrative regulation sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Section 2. Responsibilities. (1) The federal regulations at 30 C.F.R. Part 823 require that the U.S. Soil Conservation Service (SCS) within each state establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

(2) The federal regulations at 30 C.F.R. Part 823 require that the cabinet use the soil-reconstruction specifications established by the SCS, as referenced in subsection (1) of this section, to carry out its responsibilities. Therefore, the following document is incorporated herein by reference: "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland," January 1986. Copies may be obtained from the Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky.

Section 3. Applicability. The requirements of this administrative regulation, including the SCS prime farmland specifications of Section 2 of this administrative regulation, shall apply to prime farmland affected by surface coal mining and reclamation operations except that which has been excluded in accordance with 405 KAR 8:050, Section 3(1).

Section 4. Soil Removal and Stockpiling. (1) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(2) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of Section 5(1) of this administrative regulation.

(3) Soil removal and stockpiling operations on prime farmland shall be conducted to:

(a) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exist prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(b) Separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by Section 5(1) of this administrative regulation. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(4) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall meet the requirements of 405 KAR 16:050 or 18:050.

Section 5. Soil Replacement. (1) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface



horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. The determination of whether a horizon inhibits or prevents root penetration shall be in accordance with the SCS specifications under Section 2 of this administrative regulation.

(2) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(3) The operator shall replace the B horizon, C horizon, or other suitable material specified in Section 4(3)(b) of this administrative regulation to the thickness needed to meet the requirements of subsection (1) of this section.

(4) The operator shall replace the topsoil or other suitable soil materials specified in Section 4(3)(a) of this administrative regulation as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

Section 6. Revegetation and Restoration of Soil Productivity. (1) Requirements for revegetation and demonstration of successful restoration of soil productivity are set forth in "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining," Kentucky Department for Natural Resources in consultation with the U.S. Soil Conservation Service, June 1985. This document is incorporated herein by reference. Copies may be obtained from the department.

(2) Data on crop yields from restored prime farmland soils shall be verified by the cabinet. The permittee shall notify the appropriate regional office of the department of harvest dates in order to provide the opportunity for cabinet personnel to monitor yield measurements. This notification shall be in writing at least thirty (30) days prior to anticipated harvest dates and shall be followed up by telephone prior to actual harvest dates.

(3) Irrespective of the provisions of 405 KAR 1:005, this section shall also apply to prime farmland mined under the interim regulatory program under 405 KAR 1:250. (8 Ky.R. 1590; eff. 1-6-1983; 12 Ky.R. 955; 1336; eff. 2-4-1986; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Permits

4 (Repealer)

5 405 KAR 26:011. Repeal of 405 KAR 26:001.

6 RELATES TO: KRS Chapter 350, 350.010, 350.020, 350.028, 350.050, 350.055, 350.057,  
7 350.060, 350.062, 350.064, 350.070, 350.085, 350.090, 350.093, 350.095, 350.100, 350.110,  
8 350.113, 350.130, 350.135, 350.151, 350.445, 350.450, 350.465, 350.990

9 STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.050, 350.060, 350.064, 350.093,  
10 350.130, 350.135, 350.151, 350.450, 350.465

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) provides the Energy and  
12 Environment Cabinet the authority to promulgate administrative regulations. This administrative  
13 regulation repeals 405 KAR 26:001. The administrative regulation was established as a way to  
14 regulate less than two (2) acre permits. The authorizing provision in KRS 350.060 was repealed  
15 in the 2006 Legislative Session. Therefore, operations of less than two (2) acres are no longer  
16 permissible in the Commonwealth.

17 Section 1. 405 KAR 26:001, Operations of two (2) acres or less, is hereby repealed.

405 KAR 26:011 approved for filing.

9/13/2019

Date

A handwritten signature in black ink, reading "Charles G. Snavely", written over a horizontal line.

Charles G. Snavely, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 26, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 26:011  
Contact Person: Michael Mullins

Contact number: (502) 782-6720  
Email: michael.mullins@ky.gov

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation repeals 405 KAR 26:001.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 405 KAR 26:001. 405 KAR 26:001 contains the information related to coal mining operations of two acres or less.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining operations. This administrative regulation repeals the 405 KAR 26:001 which contains information related to coal operations of two acres or less.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 405 KAR 26:001. Operations of two acres or less are no longer allowed in the Commonwealth and therefore the administrative regulation is being repealed.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: The amendment repeals the administrative regulation pertaining to operations of two acres or less.
  - (b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information in 405 KAR 26:001 is no longer necessary.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the administrative regulation pertaining to coal operations of two acres or less.
  - (d) How the amendment will assist in the effective administration of the statutes: This amendment will repeal the requirements pertaining to coal operations of two acres or less.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact, as coal operations of two acres or less is no longer allowed in the

Commonwealth.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this repealer.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no benefits associated with complying with this repealer.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially: There are no costs associated with the repeal of this administrative regulation.
  - (b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to repeal these administrative regulations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are necessary.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not involve any fees.
- (9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 26:011  
Contact Person: Michael Mullins

Contact number: (502) 782-6720  
Email: michael.mullins@ky.gov

- (1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.050, 350.060, 350.064, 350.093, 350.130, 350.135, 350.151, 350.450, 350.465.
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal will not generate revenue.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate revenue.
  - (c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.
  - (d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.