

CHAPTER 114**(SB 180)**

AN ACT relating to remining and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 350.085 is amended to read as follows:

- (1) No application for a permit and no operation shall be approved or allowed by the cabinet if there is found on the basis of the information set forth in the application that the requirements of this chapter or administrative regulations will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading, or reclamation of the affected area can be carried out consistent with the purpose of this chapter.
- (2) If the cabinet finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the Commonwealth with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, or acid water pollution cannot feasibly be prevented, the cabinet may delete the part of the land described in the application upon which that overburden exists.
- (3) Subject to valid existing rights, no surface coal mining operations except those which existed on or before August 4, 1977, shall be permitted within three hundred (300) feet from any occupied dwelling unless waived by the owner, nor within three hundred (300) feet of any public building, school, church, community, or institutional building, public park, or within one hundred (100) feet of a cemetery. The cabinet shall not issue a permit if it finds that the operation will 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. The cabinet shall delete the areas from the permit application or operation.
- (4) Subject to valid existing rights, no surface coal mining operations except those which existed on or before August 4, 1977, shall be permitted within one hundred (100) feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The cabinet shall permit the roads to be relocated or the area affected to lie within one hundred (100) feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interest of the public and the affected land owner will be protected, and shall not approve the application for a permit where the surface coal mining operation will adversely affect a wild river established pursuant to KRS Chapter 146, a state park or place listed on the National Register of Historic Places unless adequate screening and other measures as approved by the cabinet are incorporated into the permit application.
- (5) Subject to valid existing rights, no surface coal mining operations except those which existed on August 4, 1977, shall be permitted on any privately owned lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act and national recreation areas designated by Act of Congress.

- (6) If based on the information provided pursuant to KRS 350.060(3)(h) and other relevant information, the cabinet finds that any surface coal mining and reclamation operation owned or controlled by the applicant is currently in violation of this chapter or other requirements listed pursuant to KRS 350.060(3)(h), the cabinet shall not issue the permit or permit renewal until the applicant submits proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected. It shall be grounds to deny a permit or permit renewal if the cabinet, based on any information available to it and after a hearing, makes a finding that the applicant, or the operator specified in the application has demonstrated a pattern of willful violations pursuant to KRS 350.130(3).
- (7) The prohibition of subsection (6) of this section shall not apply to a permit applicant with a violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for and under a permit for remining held by the applicant. As used in this subsection, the term "violation" has the same meaning as the term has under subsection (6). ***After September 30, 2004, the period of authority of this subsection shall be coincident with the period of authority of sec. 510(e) of Pub. L. No. 95-87, the "Surface Mining Control and Reclamation Act of 1977," as amended, 30 U.S.C. sec. 1260(e)***~~[The authority of this subsection shall terminate on September 30, 2004].~~

Section 2. KRS 350.095 is amended to read as follows:

- (1) The permittee shall assume responsibility for successful revegetation as required in KRS 350.435 for a period of five (5) full years after the last year in which augmented seeding, fertilizing, irrigation, or other work occurs. The cabinet shall promulgate administrative regulations which shall include provisions to assure compliance with KRS 350.435, 350.093, and other applicable provisions. The cabinet may by administrative regulation set forth different requirements when it approves a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan.
- (2) On lands eligible for remining, the permittee shall assume the responsibility for successful revegetation for a period of two (2) full years after the last year in which augmented seeding, fertilizing, irrigation, or other work occurs in order to assure compliance with the applicable standards. ***After September 30, 2004, the period of authority of this subsection shall be coincident with the period of authority of sec. 515(b)(20)(B) of Pub. L. No. 95-87, the "Surface Mining Control and Reclamation Act of 1977," as amended, 30 U.S.C. sec. 1265(b)(20)(B)***~~[The authority of this subsection shall terminate on September 30, 2004].~~

Section 3. Whereas the federal authority corresponding to subsection (7) of Section 1 of this Act and subsection (2) of Section 2 of this Act is expected to be extended after September 30, 2004, and whereas extension of state authority is necessary so that certain incentives to remining may continue to be applied in accordance with state and federal law, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 18, 2005.