

CHAPTER 37**(SB 136)**

AN ACT relating to surface coal mining.

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

Section 1. KRS 350.060 is amended to read as follows:

- (1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.
- (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.
- (3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:
 - (a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;
 - (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;
 - (c) The owner or owners of the coal to be mined;
 - (d) The source of the applicant's legal right to mine the coal on the land affected by the permit;
 - (e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;
 - (f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of the permits;
 - (g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;
 - (h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and
 - (i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.

- (4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.
- (5) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.
- (6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:
 - (a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;
 - (b) Identify the area to correspond with the application;
 - (c) Show adjacent deep mining;
 - (d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;
 - (e) Be of a scale of 1:24,000 or larger;
 - (f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within five hundred (500) feet of the area;
 - (g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;
 - (h) Show the date on which the map was prepared, the north point, and the quadrangle name; and
 - (i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.
- (7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.
- (8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map as incomplete if it is not properly certified.
- (9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling; grading work; and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.
- (10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative

regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.

- (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed three hundred seventy-five dollars (\$375), plus a fee set by administrative regulation but not to exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan. The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. The cabinet shall promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds.
- ~~(12) Surface coal mining and reclamation operations which affected two (2) acres or less, as defined by administrative regulations of the cabinet, which were conducted pursuant to two (2) acre or less permits issued by the cabinet, which were commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987, shall be exempt from the requirements of this chapter, except as follows. Reclamation of the operations shall be accomplished in accordance with administrative regulations promulgated by the cabinet for operations of two (2) acres or less. The cabinet shall not require that the highwalls left by the operations be eliminated. Bond shall be maintained until reclamation is successfully completed. All procedural provisions and the penalty provisions of KRS 350.990 shall apply to operations conducted pursuant to this subsection. The cabinet shall enforce this subsection consistent with this chapter, except that the cabinet shall not issue orders requiring cessation of operations for mere failure to abate a violation.~~
- ~~(13)~~ The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations; provided, that the cabinet shall require that all the areas overlying underground workings be permitted but that the areas overlying underground workings not affected by operations and facilities occurring on the surface shall not be subject to the payment of acreage fees or bond requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.
- ~~(13)~~~~(14)~~ Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed three hundred seventy-five dollars (\$375). The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:
- (a) The terms and conditions of the existing permit are not being satisfactorily met;
 - (b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;
 - (c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;
 - (d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or

(e) Any additional revised or updated information required by the cabinet has not been provided.

Prior to the approval of any renewal of permit, the cabinet shall provide notice to the appropriate public authorities.

~~(14)(15)~~ If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.

~~(15)(16)~~ Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit. ~~However, if a permit has expired or if a permit renewal application has not been timely filed, and the operator or permittee desires to continue the surface coal mining operation, the cabinet shall forthwith cause a notice of noncompliance to be issued. The notice of noncompliance shall be deemed to have been complied with, and the permit may be renewed, if the cabinet receives a permit renewal application within thirty (30) days of the receipt of the notice of noncompliance. Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal. Failure to comply with the remedial measures of the notice of noncompliance shall result in the cessation of the surface coal mining operation.]~~

~~(16)(17)~~ Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.

~~(17)(18)~~ Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued. The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.

~~(18)(19)~~ All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

Section 2. KRS 350.075 is amended to read as follows:

- (1) In order to bring about a more desirable land use or promote the public interest and the environment, the cabinet may, at its discretion, issue special permits for the remining of previously affected areas, including but not limited to, secondary coal recovery operations, such as coal extraction from coal refuse piles and coal recovery from slurry ponds. Such permits may provide for alternate requirements for revegetation, topsoil, bonding, premining data collection requirements, water quality requirements where there are pre-existing pollutional discharges resulting from previous mining, and other provisions which may encourage remining and secondary coal recovery.
- (2) The cabinet is hereby authorized to promulgate administrative regulations as necessary in order to implement the provisions of this section.

~~(3) The cabinet shall, on or before August 1, 1986, submit to the Federal Office of Surface Mining proposed regulations to amend the state program to provide for such permits.]~~

Section 3. KRS 350.090 is amended to read as follows:

- (1) Under the provisions of this chapter and administrative regulations adopted by the cabinet, a permittee shall prepare and the permittee or operator shall carry out a method of operation, plan of grading and backfilling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and the plans of backfilling, grading, and reclamation, all measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, rolling stones and overburden, water pollution, and hazards dangerous to life and property. The permit application containing the required plans and other information as required shall be submitted to the cabinet and ~~except for applications or renewals submitted in compliance with KRS 350.060(2),~~ the cabinet shall notify the applicant by certified mail, return receipt requested, within sixty-five (65) cumulative working days after receipt of a complete application whether it is acceptable. If applicable notice, hearing, and conference procedures prevent a decision from being issued within the sixty-five (65) cumulative working day period, the cabinet shall have additional reasonable time to issue its decision, not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures. If the permit application is not acceptable, the cabinet shall set forth the reasons for which the application or plans are not acceptable and it may propose modifications, delete areas, or reject the entire application. If the applicant disagrees with the decision of the cabinet, he may, by written notice, request a hearing conducted by the cabinet in the manner provided by KRS 350.0305. The cabinet shall notify the applicant by certified mail, return receipt requested, within twenty (20) days after the hearing of its decision. Any person aggrieved by a final order of the cabinet may appeal through the courts as set forth in KRS 350.0305.
- (2) If the permittee desires to seek funds from the reclamation development fund to develop an economic development unit during reclamation, the permittee shall submit, along with the reclamation plan, a reclamation development plan outlining the reclamation development project and showing how it will conform with the reclamation standards of this chapter.
- (3) No permittee, operator, or person shall throw, dump, pile, or permit the dumping, piling, or throwing, or otherwise placing 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 the area of land which is under permit and for which bond has been posted under KRS 350.060 or place these materials in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of the area of land which is under permit and for which bond has been posted under KRS 350.060.

Section 4. KRS 350.093 is amended to read as follows:

- (1) As determined by administrative regulations of the cabinet, time and distance limits shall be established requiring backfilling, grading, and planting to be kept current, so that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable under regulations promulgated by the cabinet. All backfilling and grading shall be completed before necessary equipment is moved from the operation; except that the cabinet may for good cause approve the moving of equipment before all backfilling and grading is completed.
- (2) (a) The cabinet may allow a permittee to defer the time criteria of contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that the deferment is necessary to address at least one (1) of the following:
 1. Adverse condition including weather, labor, and other conditions clearly beyond the permittee's control;
 2. Other bona fide mining operations carried out on a strip mined area, pursuant to KRS 350.080; or
 3. Coal marketing problems.
- (b) Application for a deferment pursuant to this section shall be in the form prescribed by the cabinet. The applicant shall have the burden of establishing the need for the deferment. The applicant for the deferment shall demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation will be met during the period of the deferment. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that no environmental damage will occur during the period of deferment. Reclamation deferments may be approved for a period reasonably related to

the specified conditions justifying the deferment, but the aggregate deferral period shall not exceed thirty (30) months. The deferral shall not extend beyond the expiration date of the permit. The cabinet shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.

- (3) If the permittee or operator desires to conduct drift mining or other underground mining upon the premises or use the openings for haulageways or other lawful purposes, the permittee or operator may designate locations to be used for purposes at which places it will not be necessary to backfill until the drift or other underground mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. That portion of the locations shall be described and designated on the map attached thereto. If the permittee or operator wishes to combine surface operations with underground mining operations to assure maximum practical recovery of coal resources, the cabinet may grant a variance, pursuant to regulations promulgated by the cabinet, for specific areas within the reclamation plan from the requirement that reclamation efforts proceed pursuant to subsection (1) of this section so as to permit underground mining operations prior to reclamation.
- (4) The cabinet may release in whole or in part the reclamation bond or deposit for a particular operation if the cabinet is satisfied that the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter. These bond releases shall be made in accordance with the following schedule:
 - (a) When the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent (60%) of the bond or collateral for the applicable permit area.
 - (b) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, additional bond or collateral for the applicable permit shall be released. When determining the amount of bond to be released after successful revegetation has been established, the cabinet shall retain that amount of the bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation; this amount shall be retained for the period specified for permittee responsibility for reestablishing revegetation. No part of the bond or deposit shall be released under this subsection as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of requirements set by this chapter or until soil productivity for prime farm lands has returned to levels of yield equivalent to those of unmined land of the same soil type in the surrounding area under equivalent management practices as determined from soil surveys that may be required to be included in the permit application. If a sedimentation pond is to be retained as a permanent impoundment, the portion of bond may be released under this subsection so long as provisions for sound future maintenance by the permittee or the landowner have been made with the cabinet.
 - (c) When the permittee has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, or collateral, but not before the expiration of the period specified for permittee responsibility. No bond shall be fully released until all reclamation requirements of this chapter are fully met.
- (5) Upon satisfying the requirements of subsections (4)(a), (b), or (c) of this section, the permittee may file, or the cabinet shall initiate, an application for total or partial bond release.
 - (a) A permittee shall have the right to begin public advertisement of its request for bond release at the time it files its request for the release. The cabinet may undertake, at permittee expense, public advertisement of any cabinet initiated bond release. If the cabinet initiates a bond release pursuant to this subsection but chooses not to advertise the release pursuant to this section, and the permittee does not advertise the request for the release within the time schedules established by this subsection, the bond release application shall be denied. All public advertisements of bond release applications, whether authorized by the permittee or the cabinet, shall begin within sixty (60) days after either the filing of a bond release request by the permittee or the initiation of a bond release by the cabinet. Public advertisement shall occur at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation.

- (b) The public advertisement required by this subsection shall include: the permit number and permit approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the cabinet to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted. Proof of advertisement shall be placed with the bond release application within thirty (30) days after the advertisement.
 - (c) Within thirty (30) days of filing of any bond release request, the permittee shall submit copies of letters which it has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. For bond releases initiated by the cabinet, the cabinet shall undertake the notification requirements set forth in this subsection.
 - (d) Upon the filing of an application for bond release by a permittee, or the initiation of the release by the cabinet, the cabinet shall notify, within thirty (30) days of the filing or initiation, the municipality where the surface coal mining operation is located, pursuant to regulations promulgated by the cabinet.
- (6) Upon the filing of any partial or total bond release request by a permittee, the cabinet shall within thirty (30) days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface or subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution.
 - (7) The cabinet shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within five (5) days following receipt of proof of public advertisement as required in subsection (5)(b), or the end of the thirty (30) day public comment period, whichever is later, if no public hearing is held pursuant to subsection (10) of this section; and if there has been a public hearing held pursuant to subsection (10) of this section, within thirty (30) days thereafter.
 - (8) If the cabinet disapproves the application for release of the bond or portion thereof, the cabinet shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to serve the release and allowing opportunity for a public hearing. The cabinet shall not disapprove an application for release of a surety bond or a bond secured by a letter of credit as provided for under subsection (4)(a) or (b) of this section or under the partial release provisions applicable to an interim permit, or take any action to forfeit the surety bond, or bond secured by letter of credit, solely upon the permittee's failure to pay penalties or fines, if applicable reclamation requirements for the requested release have been fully met. The cabinet shall not continue to hold under the interim or permanent program remaining surety bond proceeds or the remaining bond secured by a letter of credit where a forfeiture has occurred solely as a result of a failure to pay penalties or fines, if the reclamation requirements of this chapter have been fully met.
 - (9) The bond liability of the permittee shall include only those actions which the permittee is obliged to take under the permit, including completion of the reclamation plan. ~~Actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond.~~
 - (10) Any person having a valid legal interest which might be adversely affected by release of the bond, and the responsible officer or head of any governmental agency so designated by cabinet regulations, shall have the right to file written objections to the proposed bond release with the cabinet, and to request a hearing in accordance with procedural regulations promulgated by the cabinet.

Section 5. KRS 350.445 is amended to read as follows:

The following performance standards shall be applicable to steep-slope strip mining and shall be in addition to those general performance standards required by KRS 350.405 to 350.435; provided, however, that the provisions of this section shall not apply to those situations in which a permittee or operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area, or where a permittee or operator is in compliance with the provisions of KRS 350.450(2):

- (1) The permittee or operator shall insure that when performing strip mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter not be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of KRS 350.410 or 350.445(2) shall be permanently stored pursuant to KRS 350.440.
- (2) The permittee or operator shall complete backfilling with spoil material and shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation.
- (3) The permittee or operator may not disturb land above the top of the highwall unless the cabinet finds that the disturbance will facilitate compliance with the environmental protection standards of this subsection; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate compliance. The land above the highwall may be disturbed for construction of a permanent road only where the applicant affirmatively demonstrates, and the cabinet makes a detailed and written determination, that the proposed disturbance facilitates compliance with this chapter and provided that the land disturbed shall be limited to that amount necessary to facilitate such compliance. The cabinet shall make this determination upon a demonstration by the permittee that:
 - (a) The permittee will completely eliminate the production highwall and backfill the mined areas to approximate original contour with no road remaining on the bench;
 - (b) The road will be placed on a solid base rather than on fill material and drainage will be diverted from the mining area;
 - (c) The road will comply with all applicable design criteria, including a drainage plan for avoiding seepage or uncontrolled discharge of water into the backfilled areas;
 - (d) The spoil calculations and spoil disposal plans include the road cut material and the extent, if any, that road cut material will be used to eliminate a production highwall;
 - (e) The road will connect to another road or roads and is necessary in order to support the approved postmining land uses;
 - (f) Where practical and feasible, an undisturbed barrier will be left between the production highwall and the road itself. When an undisturbed barrier is not feasible, witness monuments will be left at a minimum of two (2) locations above the production highwall;
 - (g) The road will be constructed to a size and design appropriate to ~~support coal mining activities and~~ the proposed post-mining land use;
 - (h) The proposed mine plan and sequencing of the road construction in relation to the mining activity will minimize placement of spoil material into valley or hollow fills and will maximize permanent retention of mined spoil on the mine bench;
 - (i) There will be no coal removal from the construction of the permanent road except for incidental nonmerchantable coal that is disposed of in an approved manner; and
 - (j) All other performance standards of the chapter are met.
- (4) For the purposes of this section, the term "steep slope" is any slope above twenty (20) degrees or such lesser slope as may be defined by the cabinet, by regulation, after consideration of soil, climate, and other characteristics of the region.

Section 6. The following KRS section is repealed:

350.285 Removal of coal on private land -- Implementation of section.

Approved March 24, 2006.