

CHAPTER 103**(HB 283)**

AN ACT relating to coal mining permits and declaring an emergency.

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 within three hundred (300) feet of an as-drilled oil or gas well, but as-drilled locations of oil and gas wells shall be certified only by a licensed surveyor and the well locations shall be entered in coordinates in feet units, using NAD 83, with Single Zone Projection, as those terms are defined in KRS 350.010;
 - (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 **two thousand five hundred dollars (\$2,500)**~~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) 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) 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 **seven hundred fifty dollars (\$750)**~~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) 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) 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.
- (16) 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) 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) 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 350.070 is amended to read as follows:

- (1) Any extensions of the area covered by the permit, except incidental boundary revisions, shall be made by application for another permit or an amendment to the permit. However, extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances may be made by application for a major revision to the permit.
- (2) For an amendment, the permittee shall file an application, map, and revised reclamation plan in the same form and with the same content as required for an original application under this chapter. He shall pay a basic fee set by regulation and bearing a reasonable relationship to the cost of processing the permit application, not to exceed **one thousand seven hundred fifty dollars (\$1,750)**~~three hundred seventy five dollars (\$375)~~, plus a fee set by regulation, not to exceed seventy-five dollars (\$75), for each acre or fraction of an acre for the increase requested. He shall file with the cabinet a supplemental bond in the amount to be determined under the provisions of KRS 350.060(11) for each acre or fraction of an acre of the increase approved. This application shall be subject to all of the same requirements as an original application, including, but not limited to, the same public notice, review, and issuance or denial provisions.
- (3) If the cabinet approves a reduction in the acreage covered by the permit, it shall release the bond for each acre reduced, but the bond shall not be reduced below ten thousand dollars (\$10,000). If the cabinet approves a reduction in acreage, it shall transfer the acreage fee for each acre reduced to acreage fees for subsequent permit applications by the permittee.
- (4) The cabinet shall promulgate regulations specifying the permit application information requirements and procedures, including notice and hearing, which shall apply depending on the scale or extent of a permit revision. Any revision which proposes significant alterations in the reclamation plan shall be subject to the notice and hearing requirements as set forth in the regulations of the cabinet. The applicant for a revision shall pay a basic fee set by regulation, not to exceed **seven hundred fifty dollars (\$750) for a minor revision and one thousand seven hundred fifty dollars (\$1,750) for a major revision**~~three hundred seventy five dollars (\$375)~~, plus a fee set by regulation not to exceed seventy-five dollars (\$75), for each acre or fraction of an acre included in an incidental boundary revision.
- (5) Incidental boundary revisions shall be deemed minor revisions if they:
 - (a) Do not exceed ten percent (10%) of the initial permit acreage;

- (b) Are contiguous with the permit acreage;
 - (c) Are within the same watershed as the initial permit acreage;
 - (d) Are required for an orderly continuation of the mining operation;
 - (e) Cover the same coal seam or seams as in the permit;
 - (f) Would only involve lands for which the hydrologic and geologic data and the probable hydrologic consequences analysis contained in the permit are applicable to the proposed incidental boundary revision;
 - (g) Would not involve properties designated as unsuitable for mining, or any properties eligible for listing on the National Register of Historic Places;
 - (h) Would not involve any of the special categories of mining listed in 30 C.F.R. Part 785 including, but not limited to, prime farmland and coal preparation plants, unless the approved permit already includes the relevant category;
 - (i) Would not constitute a change in the method of mining; and
 - (j) Would be reclaimed in conformity with the initial reclamation plan.
- (6) For the purpose of this section, the maximum acreage allowed to be added by an incidental boundary revision shall be as follows:
- (a) Surface operations shall be allowed up to twenty (20) acres;
 - (b) Underground operations shall be allowed up to ten percent (10%) of the original permitted acreage of the underground workings or twenty (20) acres, whichever is less;
 - (c) Surface disturbances of underground mines including, but not limited to, face-up areas and haul roads, shall be allowed up to twenty (20) acres;
 - (d) The cumulative acreage added by successive revisions shall not exceed the above limitations.

➔Section 3. KRS 350.135 is amended to read as follows:

- (1) No surface coal mining permit issued pursuant to this chapter shall be transferred by sale, assignment, lease, or otherwise except upon the written approval by the cabinet of a joint application submitted by both the transferor and the transferee. A basic fee set by regulation, and bearing a reasonable relationship to the cost of processing the transfer, but not to exceed *seven hundred fifty dollars (\$750)*~~three hundred seventy five dollars (\$375)~~ shall accompany the application and no acreage fee will be assessed. The transferee shall file with the application a bond satisfactory to the cabinet which shall ensure reclamation of the entire area of land affected under the permit, including areas previously affected by the transferor. All rights and liabilities under the permit shall pass to the transferee upon written approval of the transfer by the cabinet, except that the transferor shall remain liable for any civil penalties resulting from violations occurring prior to the date of approval of the transfer. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under this chapter.
- (2) After the cabinet has given its written approval to the transfer, the transferee may conduct surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee. Any transferee seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit, shall apply for a new or revised permit pursuant to the requirements of the cabinet.
- (3) The cabinet shall not release the first permittee from bond liability under this chapter as to that particular operation until the transferee, having filed a bond satisfactory to the cabinet, receives written approval from the cabinet for the transfer, and otherwise complies with the requirements of this chapter, and provided further that the transferee shall assume as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the former permittee.
- (4) The cabinet may promulgate reasonable regulations and administrative procedures to implement this section.
- (5) The cabinet shall approve the transfer application if:

- (a) A joint agreement or sale has been executed;
- (b) The transferee has posted bond satisfactory to the cabinet which insures reclamation of the entire area of land affected under the permit;
- (c) The transferee has paid the fee pursuant to subsection (1) of this section;
- (d) The transferee has agreed to operate under provisions of the approved permit being transferred.

➔Section 4. KRS 350.139 is amended to read as follows:

- (1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the Environmental and Public Protection Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund, except *those fees established in KRS 350.060(11) and (13), 350.070(2) and (4), 350.135(1), and* as provided in KRS 350.990(1). All funds from the forfeiture of bonds shall be placed in the State Treasury in an interest-bearing account and credited to a special agency account. The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in KRS 350.131(1), forfeited bond funds shall be expended upon the lands for which the bond was given. The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.
- (2) (a) *Subject to the limitation in paragraph (b) of this subsection, the Department for Natural Resources*~~{State Treasurer}~~ shall, on or before August 1 of each year, transfer *to the fiscal court of the county in which the permitted operation is located, an amount equal to* thirty-three and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as fees for the issuance of any permit for surface coal mining operations~~{to the fiscal courts of the county in which the permitted operation is located}~~ for the general purposes of that fiscal court.
 - (b) *The department shall calculate the amount to be transferred each year under this subsection as if the fee rates in effect pursuant to this chapter on October 1, 2009, were still in effect during the preceding fiscal year.*
- (3) *Except for the amount of fees paid to fiscal courts pursuant to subsection (2) of this section, all permit and acreage fees established in subsections (11) and (13) of Section 1 of this Act, subsections (2) and (4) of Section 2 of this Act, and subsection (1) of Section 3 of this Act shall be held specifically for the use of the Division of Mine Permits.*

➔Section 5. Whereas mine permit fees have been insufficient to adequately fund the permit reviewers essential to the processing of coal mine permits creating excessive and costly delays to the coal extraction industry and reducing needed coal severance revenues to the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 8, 2010.