

## **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.)