

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.)