

405 KAR 7:080. Small operator assistance.

RELATES TO: KRS 350.465, 30 C.F.R. Parts 730-733, 735, 795, 917, 30 U.S.C. 1253, 1255, 1257

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 795, 917, 30 U.S.C. 1253, 1255, 1257

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations. This administrative regulation provides for cabinet assistance to eligible small operators, under the federally- funded small operator assistance program. This administrative regulation sets forth the scope, objectives, and sources and use of funds for the small operator assistance program in Kentucky; establishes eligibility criteria; establishes procedures and forms for filing for assistance; establishes notification procedures; sets forth the services to be provided under the program and the regulatory requirements to be addressed by those services; authorizes allocation if available funds are insufficient to serve all eligible applicants; establishes minimum standards for qualified laboratories; and requires reimbursement of the cabinet in certain circumstances.

Section 1. Scope. (1) This administrative regulation establishes the small operator assistance program (program) authorized at KRS 350.465(2)(f).

(2) Consistent with 30 USC 1257(c) and 30 CFR Part 795, this administrative regulation shall govern the procedures and criteria under which the cabinet shall provide assistance to eligible small operators in meeting the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) This administrative regulation shall be construed to allow the fullest possible extent of services consistent with federal requirements and available funds.

Section 2. Objective. The objective of this administrative regulation is to meet the intent of KRS 350.465(2)(f) by:

(1) Providing financial and other necessary assistance to eligible small operators; and

(2) Assuring that the cabinet shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the watershed(s) and particularly upon water availability.

Section 3. Source and Use of Funds. The secretary shall provide financial and other assistance under KRS 350.465(2)(f) to the extent that state funds are made available and to the extent that funds are appropriated by the United States Congress specifically for implementation of 30 USC 1257(c) and made available to the Commonwealth.

Section 4. Program Services. To the extent possible with available funds the cabinet shall provide services in accordance with this section.

(1) For eligible small operators who request assistance, the cabinet shall select and pay a qualified laboratory to perform the following services in accordance with Section 8 of this administrative regulation:

(a) Determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area, including the engineering analyses and designs necessary for the determination;

(b) Perform geologic drilling and prepare a statement of the results of test borings or core samplings;

(c) Collect cultural, historic, and archaeological resources information and prepare necessary reports and plans;

- (d) Perform preblasting surveys;
- (e) Collect site-specific resource information and prepare plans for the protection and enhancement of fish and wildlife and other environmental values; and
- (f) Develop cross sections, maps and plans required for permit applications, in accordance with 30 USC 1257(c).

(2) For eligible small operators who request assistance, the cabinet may select and pay a qualified laboratory to collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

(3) The cabinet shall provide informational services to insure that eligible small operators are made aware of the assistance available under the program.

(4) The cabinet shall make training services available to eligible small operators and their representatives and other potentially affected persons concerning preparation of permit applications and compliance with regulatory requirements.

Section 5. Eligibility for Assistance. An applicant shall be eligible for assistance if he:

- (1) Intends to apply for a permit pursuant to KRS Chapter 350;
- (2) Establishes that the probable total actual and attributed annual production of the applicant from all locations will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:
 - (a) The pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a ten (10) percent interest;
 - (b) The pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than ten (10) percent of the applicant's operation;
 - (c) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and
 - (d) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.
- (3) Is not restricted in any manner from receiving a permit under 405 KAR Chapters 7 through 24; and
- (4) Does not organize or reorganize his company solely for the purpose of obtaining assistance under this administrative regulation.

Section 6. Filing for Assistance. The application form "Kentucky Small Operator Application for Assistance", revised September 1994, is hereby incorporated by reference. This form may be reviewed or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, KY 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Each applicant shall submit the following information to the cabinet when filing for assistance:

- (1) A statement of the operator's intent to file a permit application;
- (2) The names and addresses of:
 - (a) The permit applicant; and
 - (b) The operator if different from the applicant.
- (3) The names, addresses, and percentages of ownership of all owners of and stockholders in the applicant;
- (4) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 5(2) of this administrative regulation. The schedule shall include for each location:
 - (a) The operator or company name under which coal is or will be mined;

- (b) The permit number and MSHA number if currently or previously permitted;
- (c) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant; and
- (d) Mine location (county).
- (5) The Kentucky coal severance tax vendor number and copies of payments for the past twelve (12) months made by the applicant and any affiliated companies as defined under Section 5(2) of this administrative regulation;
- (6) A description of:
 - (a) The proposed method of coal mining;
 - (b) The anticipated starting and termination dates of mining operations;
 - (c) The total number of acres of land to be affected by the proposed mining and number of acres (surface or underground) from which coal is to be removed;
 - (d) A general statement on the probable depth and thickness of the coal resource, and the name(s) of the coal seam(s) to be mined; and
 - (e) A statement identifying the coal resources in the permit area and the method by which they were calculated.
- (7) A USGS topographic map of 1:6,000 scale or larger or other topographic map of equivalent detail which clearly shows:
 - (a) The area of land to be affected;
 - (b) The names of property owners within the area to be affected and of adjacent lands;
 - (c) The location and extent of known workings for the proposed underground mine; and
 - (8) Copies of documents which show that:
 - (a) The applicant has a legal right to enter and commence mining within the permit area; and
 - (b) A legal right of entry has been obtained for the cabinet and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental information or to install necessary instruments.

Section 7. Application Approval and Notice. (1) If the cabinet finds the applicant eligible and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

- (a) Notify the applicant in writing that the application is approved;
 - (b) Determine the minimum information requirements necessary to meet the provisions of Section 8 of this administrative regulation; and
 - (c) Select the services of one (1) or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved reports shall be provided to the applicant.
- (2) If the cabinet finds the applicant ineligible, the applicant shall be informed in writing that the application is denied and the reasons for denial shall be stated.
- (3) The granting of assistance under this administrative regulation shall not be a factor in decisions by the cabinet on a subsequent permit application.

Section 8. Information Requirements. (1) General. This section describes the minimum requirements for information necessary to meet the objectives of this Program. The cabinet shall determine for each applicant or group of applicants the specific information, including the collection and analysis of field information and the development of engineering and other technical analyses, designs, and plans, that shall be provided under this section. Collection, analysis, and development of information under this section may proceed concurrently with the development of mining and reclamation plans by the applicant.

- (2) Specific provisions. Pursuant to Sections 1 through 4 of this administrative regulation, infor-

mation required under the administrative regulations listed in this subsection may be supplied under this Program.

(a) Surface mines.

1. 405 KAR 8:030, Section 11(2); Cultural, historic, and archaeological resources information.
2. 405 KAR 8:030, Section 12; General requirements for geology and hydrology.
3. 405 KAR 8:030, Section 13; Geology information.
4. 405 KAR 8:030, Section 14; Groundwater information.
5. 405 KAR 8:030, Section 15; Surface water information.
6. 405 KAR 8:030, Section 16; Alternative water supply information.
7. 405 KAR 8:030, Section 17; Climatological information.
8. 405 KAR 8:030, Section 19; Vegetation information.
9. 405 KAR 8:030, Section 20; Fish and wildlife resources information.
10. 405 KAR 8:030, Section 23; Maps and drawings.
11. 405 KAR 8:030, Section 30; MRP; protection of public parks and historic places.
12. 405 KAR 8:030, Section 32(1); Description of measures to protect the hydrologic balance.
13. 405 KAR 8:030, Section 32(3); Determination of probable hydrologic consequences of mining.
14. 405 KAR 8:030, Section 32(4); Plan for monitoring groundwater and surface water.
15. 405 KAR 8:030, Section 36; MRP; Fish and wildlife protection and enhancement.
16. 405 KAR 16:120, Section 2; Preblasting survey.

(b) Underground mines.

1. 405 KAR 8:040, Section 11(2); Cultural, historic, and archaeological resources information.
2. 405 KAR 8:040, Section 12; General requirements for geology and hydrology.
3. 405 KAR 8:040, Section 13; Geology information.
4. 405 KAR 8:040, Section 14; Groundwater information.
5. 405 KAR 8:040, Section 15; Surface water information.
6. 405 KAR 8:040, Section 16; Alternate water supply information.
7. 405 KAR 8:040, Section 17; Climatological information.
8. 405 KAR 8:040, Section 19; Vegetation information.
9. 405 KAR 8:040, Section 20; Fish and wildlife resources information.
10. 405 KAR 8:040, Section 23; Maps and drawings.
11. 405 KAR 8:040, Section 30; MRP; protection of public parks and historic places.
12. 405 KAR 8:040, Section 32(1); Description of measures to protect the hydrologic balance.
13. 405 KAR 8:040, Section 32(3); Determination of the probable hydrologic consequences of mining.
14. 405 KAR 8:040, Section 32(4); Plan for monitoring groundwater and surface water.
15. 405 KAR 8:040, Section 36; MRP; Fish and wildlife protection and enhancement.
16. 405 KAR 18:120, Section 2; Preblasting survey.

(3) Availability of information. Information collected under this program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

Section 9. Allocation of Funds. If available funds are not sufficient to provide services under this administrative regulation to all eligible applicants, the cabinet shall allocate the available funds among eligible applicants based upon a formula which shall include, but shall not be limited to, the following factors:

- (1) Date of filing of application for assistance; and
- (2) Anticipated date for commencing mining operations.

Section 10. Qualified Laboratories. (1) General.

(a) The cabinet shall establish a list of qualified laboratories which may be used by the cabinet under the procedures of this section. A qualified laboratory shall be a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination, statement, or other eligible services under this program.

(b) Persons who desire to be included in the list of qualified laboratories established by the cabinet shall apply to the cabinet and provide such information as is necessary to establish the qualifications required by subsection (2) of this section.

(2) Basic qualifications.

(a) To be designated a qualified laboratory, a firm shall demonstrate that it:

1. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed.

2. Is capable of collecting necessary field information and samples.

3. Has adequate space for material preparation and cleaning and sterilizing of necessary equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods.

4. Meets the requirements of the Occupational Safety and Health Act or the equivalent Commonwealth safety and health program.

5. Has the financial capability and business organization necessary to perform the work required.

6. Has analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in: "Standard Methods for the Examination of Water and Waste Water," 14th Edition, 1975; "Methods for Chemical Analysis of Water and Wastes," 1974; and other references as specified by the cabinet.

7. Has the capability of making hydrologic field measurements and to conduct analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods or by those appropriate methods or guidelines for information acquisition recommended by the cabinet.

(b) The qualified laboratory shall be capable of performing some or all of the services set forth in Section 8 of this administrative regulation. Subcontractors may be used to provide the services required if their use is defined in the application for qualification and they meet the requirements established by the cabinet.

Section 11. Applicant Liability. (1) The applicant shall reimburse the cabinet for the costs of the services performed pursuant to this administrative regulation:

(a) If the applicant submits false information;

(b) If the applicant fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory reports;

(c) If the applicant fails to mine after obtaining a permit;

(d) If the cabinet finds that the applicant's actual and attributed production of coal for all locations exceeds 300,000 tons during the twelve (12) months immediately following the date the permit is issued; or

(e) If the permit rights or the permit application is sold, transferred, or assigned to another person and the successor's total actual and attributed production exceeds the 300,000 ton annual production limit during the twelve (12) months immediately following the date the original permit is reissued in the name of the successor. Under this paragraph, the applicant and its successor shall be jointly and severally obligated to reimburse the cabinet.

(2) The cabinet may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith. (8 Ky.R. 1472; eff. 1-6-1983; 11 Ky.R. 1800; eff. 8-13-1985; 18 Ky.R. 356; 2204; eff. 11-26-1991; 20 Ky.R. 3297; 1314; eff. 9-28-1994; TAm eff. 8-9-2007; TAm eff. 7-6-2016; Crt eff. 7-3-2018.)