

405 KAR 8:020. Coal exploration.

RELATES TO: KRS 350.057, 350.610, 30 C.F.R. Parts 730-733, 735, 772, 917, 30 U.S.C. 1253, 1255, 1262

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.057, 350.060, 350.465, 30 C.F.R. Parts 730-733, 735, 772, 917, 30 U.S.C. 1253, 1255, 1262

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to coal exploration operations. This administrative regulation specifies when notice to the cabinet is required and when prior written approval is needed from the cabinet for coal exploration operations. This administrative regulation further specifies the application process, information requirements, and hearing and compliance requirements.

Section 1. Exploration in an Area Not Designated Unsuitable for Mining and Removing Twenty-five (25) Tons or Less of Coal. (1) Any person who intends to conduct coal exploration during which twenty-five (25) tons or less of coal will be removed and which will not take place in an area designated unsuitable for mining pursuant to 405 KAR Chapter 24 shall, at least twenty-one (21) days prior to conducting the exploration, file with the cabinet a written notice of intention to explore.

(2) The notice shall include:

(a) The name, address, and telephone number of the person seeking to explore;

(b) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(c) A precise narrative description of the exploration area, or a map at a scale of 1:24,000 or greater, describing or showing the proposed area of exploration (including latitude, longitude, nearest community, and USGS quadrangle), existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, pipelines, and the general location of drill holes and trenches;

(d) A statement of the period of intended exploration;

(e) The names and addresses of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(f) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of 405 KAR 20:010.

(3) The cabinet shall, in accordance with Section 3 of this administrative regulation, place the notices on public file and make them available for public inspection and copying at the appropriate regional office of the cabinet.

(4) Any person who conducts coal exploration activities pursuant to this section which substantially disturb the natural land surface shall comply with 405 KAR 20:010.

Section 2. Exploration Removing More than Twenty-five (25) Tons of Coal and Exploration in an Area Designated Unsuitable for Mining, Regardless of Tonnage. (1) General. Any person who intends to conduct coal exploration in which more than twenty-five (25) tons of coal will be removed, or which will take place in an area designated unsuitable for mining pursuant to 405 KAR Chapter 24, shall, prior to conducting the exploration, submit an application and obtain the written approval of the cabinet in accordance with this section.

(2) Contents of application for approval. Each application for approval, in the number and form required by the cabinet, shall contain, at a minimum:

(a) The name, address, and telephone number of the applicant;

(b) The name, address, and telephone number of the representative of the applicant who will be

present at and be responsible for conducting the exploration;

(c) An exploration and reclamation operations plan, including:

1. A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (e) of this subsection, including latitude, longitude, and nearest community; surface topography; geological, surface water, and other physical features; vegetative cover, the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); cultural or historic resources listed or known to be eligible for listing on the National Register of Historic Places; known archaeological resources located within the proposed exploration area; and any other information which the cabinet may require regarding known or unknown historic or archaeological resources;

2. A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

3. An estimated timetable for conducting and completing each phase of the exploration and reclamation;

4. The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

5. A description of the measures to be used to comply with the applicable requirements of 405 KAR 20:010; and

6. A statement as to whether the proposed coal exploration will be conducted within an area which has been designated unsuitable for mining pursuant to 405 KAR Chapter 24. If so, the application shall include a description of the measures to be taken so as not to interfere with the values for which the area was designated unsuitable;

(d) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(e)1. A USGS seven and one-half (7 1/2) minute topographic map marked showing the area of land to be affected and the location of drill holes or excavations; and

2. A map at a scale of 1:6000 (one (1) inch equals 500 feet) or larger, showing the areas of land which may be affected by the proposed exploration and reclamation. The map shall also specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(f) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation;

(g) A justification of the necessity to remove more than twenty-five (25) tons of coal from the area during exploration; and

(h) A fee of \$375.

(3) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(a) As contemporaneously as possible with receipt of written notification from the cabinet under subsection (4)(a) of this section that the application has been determined to be administratively complete, public notice of the filing of the administratively complete application with the cabinet shall be published by the applicant in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed exploration area is to be locat-

ed.

(b) The public notice shall state the name and business address of the person seeking approval, the date of the filing of the administratively complete application, the address of the cabinet at which written comments on the application may be submitted, the closing date of the public comment period under paragraph (c) of this subsection, and a description of the general area of exploration.

(c) Any person with an interest which is or may be adversely affected shall have the right to file with the cabinet written comments on the application within thirty (30) days of the publication of the public notice under paragraph (a) of this subsection.

(4) Processing of applications.

(a) Within ten (10) working days of receipt of an application for approval of coal exploration operations, the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. The date of written notification shall be deemed the date of filing of the administratively complete application. A determination by the cabinet that the application is administratively complete shall not mean that the application is technically sufficient.

(b) The cabinet shall act upon an application within sixty (60) days after the filing of the administratively complete application.

(c) The cabinet shall approve a complete and accurate application filed in accordance with this administrative regulation, if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

1. Will be conducted in accordance with KRS Chapter 350, 405 KAR 20:010, and this administrative regulation;

2. Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species;

3. Will not adversely affect any cultural or historic resources listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the cabinet and the agency with jurisdiction over the areas;

4. If located within an area designated unsuitable for mining, will not be incompatible with the values for which the area was designated unsuitable for mining; and

5. If removal of more than twenty-five (25) tons of coal has been proposed, that the removal is justified.

(5) Terms of approval. Each approval issued by the cabinet shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with KRS Chapter 350, this administrative regulation, and 405 KAR 20:010.

(6) Notice and hearing:

(a) The cabinet shall notify the applicant, the appropriate local government officials, and all commenters on the application, in writing, of its decision on the application. If the application has been disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The cabinet shall provide public notice of approval or disapproval of each application by publication of notice in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed exploration operations are to be located.

(b) Any person having an interest which is or may be adversely affected by a decision of the cabinet pursuant to paragraph (a) of this subsection shall have the opportunity for administrative and judicial review as set forth in 405 KAR 8:010, Section 24.

Section 3. Public Availability of Information. (1) Except as provided in subsection (2) of this section, all information submitted to the cabinet under this administrative regulation shall be made readily available for public inspection and copying pursuant to Kentucky open record statutes KRS 61.870 to 61.884, at the appropriate Regional Office of the Department for Natural Resources.

(2)(a) The cabinet shall not make information available for public inspection, if the person submitting it requests in writing, when it is submitted, that it not be disclosed and the cabinet determines that the information is confidential.

(b) The cabinet shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(c) Information requested to be held as confidential under this subsection shall not be made publicly available until notice and opportunity to be heard has been afforded persons seeking or opposing disclosure of the information.

Section 4. Commercial Use or Sale. (1) Except as provided under subsection (2) of this section, any person who intends to commercially use or sell coal extracted during coal exploration operations that are subject to Section 2 of this administrative regulation shall first obtain a permit to conduct surface coal mining and reclamation operations under 405 KAR 8:010.

(2) With the prior written approval of the cabinet, no permit to conduct surface coal mining and reclamation operations shall be required for the sale or commercial use of coal extracted during coal exploration operations if the sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for the approval with the cabinet. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining and reclamation operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(a) The name of the testing firm and the locations at which the coal will be tested;

(b) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

1. The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

2. The amount of coal necessary for the test and why a lesser amount is not sufficient; and

3. A description of the specific tests that will be conducted;

(c) Evidence that sufficient reserves of coal are available to the person conducting exploration or his principals for future commercial use or sale to the intended end user, or agent or broker of the user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve; and

(d) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and the feasibility of developing a surface coal mining operation.

Section 5. Compliance. All coal exploration and reclamation operations which substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of KRS Chapter 350, this administrative regulation, and 405 KAR 20:010, and any conditions on approval for exploration and reclamation imposed by the cabinet. (8 Ky.R. 1492; eff. 1-6-1983; 15 Ky.R. 428; eff. 12-13-1988; 1867; eff. 6-28-1989; 18 Ky.R. 375; eff. 11-26-1991; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)