

405 KAR 20:060. Steep slopes.

RELATES TO: KRS 350.090, 350.093, 350.100, 350.405, 350.410, 350.445, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 785.15, 785.16, 816.107, 817.107, 917, 30 U.S.C. 1253, 1255, 1257, 1258, 1265(d)

STATUTORY AUTHORITY: KRS 350.028, 350.093, 350.100, 350.151(1), 350.445, 350.450, 350.465, 30 C.F.R. parts 730-733, 735, 785.15, 785.16, 816.107, 817.107, 917, 30 U.S.C. 1253, 1255, 1257, 1258, 1265(d), 1265(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes special performance standards and limited variance procedures for operations conducted on steep slopes.

Section 1. Applicability. (1) Surface coal mining and reclamation operations on steep slopes shall meet the requirements of this administrative regulation.

(2) The standards of this administrative regulation shall not apply to:

- (a) Mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or
- (b) Operations covered by 405 KAR 20:050.

Section 2. Performance Standards. (1) Surface coal mining and reclamation operations conducted on steep slopes shall comply with requirements of this section and all other requirements of 405 KAR Chapters 7 through 24, except to the extent a variance is approved under Section 3 of this administrative regulation.

(2)(a) The permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

- 1. Spoil;
- 2. Waste materials, including waste mineral matter;
- 3. Debris, including that from clearing and grubbing of haul road construction; and
- 4. Abandoned or disabled equipment.

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, if the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapters 16 and 18 and the material is moved and placed in a controlled manner.

(3) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of 405 KAR Chapters 16 and 18, with respect to backfilling and grading, including the return of the site to the approximate original contour. The permittee shall demonstrate to the cabinet, using standard geotechnical analyses, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least one and three-tenths (1.3).

(4) Land above the highwall shall not be disturbed unless the cabinet finds that the disturbance facilitates compliance with the requirements of 405 KAR Chapters 16 through 20, provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate compliance.

(5) Material in excess of that required by the grading and backfilling provisions of subsection (3) of this section shall be disposed of in accordance with the requirements of 405 KAR 16:130 or 405 KAR 18:130.

(6) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area as required in subsection 3 of this section. Woody materials may be

chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

Section 3. Limited variances for nonmountaintop removal, steep slope sites. Surface coal mining operations may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The cabinet grants the variance and the operation is conducted and reclaimed in accordance with the plan approved under 405 KAR 8:050, Section 6.

(2)(a) After reclamation, the lands to be affected by the variance within the permit area shall be suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities);

(b) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use;

(c) The alternative postmining land use requirements of 405 KAR 16:210, Section 4 are met; and

(d) Federal, state, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(3) The applicant has demonstrated in the permit application that the watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed shall be deemed improved only if:

(a) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of ground or surface water, or flood hazards from precipitation events or thaws within the watershed containing the permit area will be reduced by decreasing the peak flow discharge, or there will be an increase in stream flow during times of the year when streams within the watershed are normally at low flow or dry and the increase in stream flow is determined by the cabinet to be beneficial to public or private users or to the ecology of the streams;

(b) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or groundwater; and

(c) The cabinet has considered any agency comments under subsection (2) of this section regarding watershed improvement.

(4) The proposed use is designed and certified by a qualified, registered, professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(5) The surface landowner of the permit area has knowingly requested, in writing in the permit application, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities).

(6) All applicable requirements of KRS Chapter 350 and 450 KAR Chapters 7 through 24, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least one and three-tenths (1.3), using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24 is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130. (8 Ky.R. 1591; eff. 1-6-1983; 10 Ky.R. 635; eff. 12-2-1983; 15 Ky.R. 505; eff. 12-13-1988; 26 Ky.R. 1697; 1946; eff. 5-22-2000; Crt eff. 7-3-

2018.)