

405 KAR 24:020. Petition requirements.

RELATES TO: KRS 350.465(2)(b), 350.610

STATUTORY AUTHORITY: KRS Chapter 13A, 350.465(2), 350.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465(2) and 350.610 require the cabinet to prepare, develop, and promulgate a permanent program for the implementation of SMCRA containing procedures similar to that Act. This administrative regulation sets forth requirements for petitions seeking designation of certain lands as unsuitable for all or certain types of surface coal mining operations and for the termination of such designations.

Section 1. General. Under the following procedures, persons may petition the cabinet to designate areas as unsuitable for all or certain types of surface coal mining operations. Additionally, there are procedures for citizens to petition the cabinet to terminate a designation of unsuitability for mining.

Section 2. Right to Petition. Any person having an interest which is or may be adversely affected has the right to petition the cabinet to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. However, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

Section 3. Designation Petition. (1) A petitioner shall file a petition containing all information that the cabinet requires pursuant to this section using forms provided by the cabinet.

(2) The petition for designation shall include the following information:

(a) The petitioner's name, address, telephone number, and notarized signature.

(b) Identification of the petitioner's interest which is or may be adversely affected, including a statement demonstrating how the petitioner satisfies the requirements of Section 2 of this administrative regulation.

(c) A USGS seven and one-half (7 1/2) minute topographic map(s) marked to show the location and size of the geographic area covered by the designation petition.

(d) A description of how surface coal mining operations in the area have or may adversely affect people, land, air, water or other resources.

(e) Allegations of facts and objective evidence which would tend to establish that the area, as defined in 405 KAR 7:020, is unsuitable for all or certain types of surface coal mining operations, assuming that contemporary mining practices required under 405 KAR Chapters 7 through 24 would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known; the portion(s) of the petitioned area and the petitioner's interests to which the allegation applies; and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area. The allegations shall address one (1) or more of the following:

1. Reclamation is not technologically and economically feasible under the provisions of 405 KAR Chapters 7 through 24; or

2. Surface coal mining and reclamation operations will be:

a. Be incompatible with existing land use policies, plans, or programs adopted by state, area-wide, or local agencies with management responsibilities for the areas which would be affected by such surface coal mining and reclamation operations;

b. Affect fragile or historic lands in which the surface coal mining operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;

c. Affect lands in which the surface coal mining operations could result in a substantial loss or reduction in the long-range availability of water supplies, to include aquifers and aquifer recharge areas;

d. Affect renewable resource lands in which the surface coal mining operations could result in a substantial loss or reduction in the long-range productivity of food or fiber products; or

e. Affect natural hazard lands in which surface coal mining operations could substantially endanger life and property.

(3) The cabinet may request that the petitioner provide other supplementary information which is readily available. However, failure to provide such information shall not render the petition incomplete.

(4) Petitions shall be mailed or delivered to: Kentucky Cabinet for Natural Resources and Environmental Protection, Lands Unsuitable Program, Department of Natural Resources, Frankfort, Kentucky 40601.

Section 4. Termination Petition. (1) A petitioner shall file a petition for termination of designation of an area as unsuitable for all or certain types of surface coal mining operations using forms provided by the cabinet. The petition for termination may cover all or any portion of the specific geographical area that was previously designated as unsuitable for surface coal mining operations and shall address those criteria upon which designation was based.

(2) The petition for termination shall include the following information:

(a) The petitioner's name, address, telephone number, and notarized signature.

(b) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation of the area as unsuitable for all or certain types of surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of Section 2 of this administrative regulation.

(c) A USGS seven and one-half (7 1/2) minute topographic map(s) marked to show the location and size of the geographic area covered by the termination petition.

(d) Allegation of facts and objective evidence covering the area for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and the petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under 405 KAR Chapters 7 through 24, would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on one (1) or more of the following bases:

1. Reclamation is now technologically and economically feasible, if the designation was based on a finding that reclamation was either technologically and economically unfeasible; or

2. Surface coal mining operations:

a. Will not now be incompatible with land use policies, plans, or programs adopted by state, area-wide, or local agencies with management responsibilities for the designated area, if the designation was based on a finding of such incompatibility;

b. Will not now result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems related to fragile or historic lands, if the designation was so based;

c. Will not now result in substantial loss or reduction of long-range availability of water supplies if the designation was so based;

d. Will not now result in substantial loss or reduction of long-range productivity of food and fiber

products, if the designation was so based; or

e. Will not now affect natural hazard lands in which the surface coal mining operation could have substantially endangered life and property, if the designation was so based.

(3) The cabinet may request that the petitioner provide other supplementary information which is readily available. However, failure to provide such information shall not render the petition incomplete.

(4) Termination petitions shall be mailed or delivered to: Kentucky Cabinet for Natural Resources and Environmental Protection, Lands Unsuitable Program, Department of Natural Resources, Frankfort, Kentucky 40601. (8 Ky.R. 1594; eff. 1-6-1983; 15 Ky.R. 508; eff. 12-13-1988; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)