

## **405 KAR 30:025. Experimental practices.**

RELATES TO: KRS 350.600

STATUTORY AUTHORITY: KRS 224.033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation governs the permitting of experimental practices that encourage advances in mining and reclamation technology and will yield useful information to the cabinet about agricultural, environmental, technological and postmining land use problems relating to oil shale operations.

Section 1. General. (1) Applicability. This administrative regulation shall apply to any person who conducts or intends to conduct oil shale operations under a permit authorizing the use of alternative mining practices on an experimental basis if the practices require a variance from the environmental protection performance standards of Title 405, Chapter 30, and such variance is not otherwise obtainable under Title 405, Chapter 30.

(2) This administrative regulation sets forth requirements for the permitting of oil shale operations that encourage advances in mining and reclamation practices or allow postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis.

(3) Experimental practices need not comply with specific environmental protection performance standards of Title 405, Chapter 30, if approved pursuant to this administrative regulation.

Section 2. Approval Procedures. (1) Approval required. No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit by the cabinet.

(2) Application requirements. Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the cabinet. The permit application shall contain appropriate descriptions, maps, and plans which show:

(a) The nature of the experimental practice;

(b) How use of the experimental practice:

1. Encourages advances in mining and reclamation technology; or

2. Allows a postmining land use for industrial, commercial, residential, and public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the administrative regulations of Title 405, Chapter 30.

(c) That the oil shale operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;

(d) That the experimental practice:

1. Is potentially more or at least as environmentally protective, during and after the proposed oil shale operations, as those required under Title 405, Chapter 30; and

2. Will not reduce the protection afforded public health and safety below that provided by the requirements of Title 405, Chapter 30.

(e) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall:

1. Insure the collection and analysis of sufficient and reliable data to enable the cabinet to make adequate comparisons with other oil shale operations employing similar experimental practices; and

2. Include requirements designed to identify, as soon as possible, potential risks to the environmental and public health and safety from the use of the experimental practice.

(f) Each application shall set forth the environmental protection performance standards of Title 405, Chapter 30 which will be implemented in the event the objective of the experimental practice is a failure.

(3) Public notice. All experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and the written notifications by the cabinet required under 405 KAR 30:130, Section 5.

(4) Criteria for approval. No permit authorizing an experimental practice shall be issued unless the cabinet finds in writing upon the basis of both a complete application filed in accordance with the requirements of this administrative regulation and Title 405, Chapter 30, that:

(a) The experimental practice meets all of the requirements of subsection (2)(b) through (e) of this section;

(b) The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved; and

(c) The permit contains conditions which specifically:

1. Limit the experimental practice authorized to that granted by the cabinet;

2. Impose enforceable alternative environmental protection requirements; and

3. Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application with such additional requirements as the cabinet may require.

Section 3. Periodic Review. (1) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety at least every three (3) years by the cabinet or at least once prior to the middle of the permit term. After review the cabinet shall require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety.

(2) Administrative review of modification order. Any person who is or may be adversely affected by an order pursuant to subsection (1) shall be provided with an opportunity for a hearing as established in 405 KAR 30:020. (8 Ky.R. 573; 1411; eff. 6-25-1983; 9 Ky.R. 947; 10 Ky.R. 215; eff. 10-5-1983; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)