

405 KAR 30:121. Oil shale exploration.

RELATES TO: KRS 61.870-61.884, 350.600

STATUTORY AUTHORITY: KRS 151.125, 224.033, 224.035, 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 sets forth requirements for conducting oil shale exploration.

Section 1. Exploration of Less than 250 Tons. (1) Any person who intends to conduct oil shale exploration during which less than 250 tons of oil shale will be removed in the area to be explored 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 description of the exploration area;

(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 practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

(3) The cabinet shall, in accordance with Section 3 of this administrative regulation, place such 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 oil shale exploration activities pursuant to this section which substantially disturb any natural land surface shall comply with 405 KAR 30:125.

Section 2. Exploration of More than 250 Tons. (1) General. Any person who intends to conduct oil shale exploration in which more than 250 tons of oil shale are removed in the area to be explored, shall, prior to conducting the exploration, 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, the following information:

(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 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. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; and known archaeological resources located within the proposed exploration area;

2. A narrative description of the methods to be used to conduct oil shale 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 oil shale 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 30:125;

(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 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 oil shale 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. Sec. 1531 et seq.); and

(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.

(3) Public notice and opportunity to comment. Public notice of the complete 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 is determined to be complete, public notice of the filing of the 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 in which the exploration area is located.

(b) The public notice shall state the name and business address of the person seeking approval, the date of the filing of the 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 complete application within thirty (30) days of the publication of the public notice under paragraph (a) of this subsection.

(4) Processing of applications.

(a) Within twenty-one (21) days of receipt of an application for approval of oil shale exploration, the cabinet shall provide written notification to the applicant as to the completeness of the application. The date of such written notification shall be deemed the date of filing of the complete application. A determination by the cabinet that the application is complete shall not be construed to mean that the application is technically sufficient.

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

(c) The cabinet shall approve a complete 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 350.600, 405 KAR 30:125, 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 resources or districts, sites, buildings, structures, or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the cabinet and the agency with management responsibility over such area.

(5) Terms of approval and bond requirement.

(a) Each approval issued by the cabinet may contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with KRS 350.600, 405 KAR 30:125, and this administrative regulation.

(b) Length of approval. An exploration approval shall be valid for two (2) years. A valid exploration approval shall carry with it the right of successive renewal upon expiration of the term of the approval.

(c) Bond requirement. If an application reveals that there will be a substantial disturbance to the natural land surface, a bond shall be posted in accordance with the requirements of 405 KAR 30:040, Section 1.

(6) Notice and hearing.

(a) The cabinet shall notify the applicant and any other party who has requested such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with interests which are 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.

Section 3. Public Availability of Information. All information submitted to the cabinet under this administrative regulation shall be made available for public inspection and copying pursuant to Kentucky open record statutes KRS 61.870 to 61.884, and 405 KAR 30:150.

Section 4. Compliance. All oil shale exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of oil shale shall be conducted in accordance with this administrative regulation and 405 KAR 30:125, and any conditions on approval for exploration and reclamation imposed by the cabinet. (8 Ky.R. 576; eff. 6-2-1982; 9 Ky.R. 949; eff. 10-5-1983; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)