

405 KAR 30:220. Postmining land use.

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 sets forth requirements for restoring land use capability after completion of mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. Prior to the final release of performance bond liability for affected areas, the areas shall be restored in a timely manner:

- (1) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or
- (2) To conditions capable of supporting higher or better alternative uses of which there is reasonable likelihood, as approved by the cabinet under Section 5 of this administrative regulation.

Section 2. Land Use Categories. Land use is categorized as follows and shall carry the meaning as defined in 405 KAR 30:010:

- (1) Cropland;
- (2) Developed water resources land;
- (3) Fish and wildlife habitat;
- (4) Forest land;
- (5) Grazing land;
- (6) Industrial/commercial land;
- (7) Pastureland/hayland;
- (8) Recreation land;
- (9) Residential land; or
- (10) Underdeveloped land.

Section 3. Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.

(2) Previously mined lands. On lands which have been previously mined, the postmining land use capability shall equal or exceed the capability of the land prior to any mining to support the actual uses and a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from the previous mining.

(3) Improperly managed lands. On lands which have received improper management as compared to similar lands in surrounding areas, the postmining land use capability shall equal or exceed the capability of the land under proper levels of management to support the actual premining uses or a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from improper management.

Section 4. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct oil shale operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establish-

ing the premining capability of the land to support a variety of feasible uses. The determination of minimum acceptable postmining land use capability shall be based upon the potential utility of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from underutilization.

Section 5. Alternative Postmining Land Use. Alternative postmining land uses may be approved by the cabinet after consultation with the landowner or the land management agency having jurisdiction over the lands, if the criteria of this section are met:

(1)(a) The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, state, or federal land use policies and plans.

(b) Authorities with statutory responsibilities for land use policies and plans shall have been provided opportunity to submit written statements of their views to the cabinet within sixty (60) days of notice by the cabinet.

(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained and remain valid throughout the mining activities.

(2) Specific plans are prepared and submitted to the cabinet which show the feasibility of the postmining land use as related to projected land use trends and markets, and that include a schedule showing how the proposed land use will be developed and achieved within a reasonable time after mining. The cabinet may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) The applicant has demonstrated that there is reasonable likelihood that any necessary public facilities will be provided.

(4) Specific and feasible plans are submitted to the cabinet which show that financing, attainment and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land use are designed under the supervision of a registered professional engineer, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the intended postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water pollution or diminution of water availability.

(7) The proposed use will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the cabinet, and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan.

(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, are reviewed by the cabinet to ensure that:

(a) The applicant has demonstrated that there is reasonable likelihood that the landowner or land manager will provide sufficient crop management after release of applicable performance bonds under 405 KAR 30:070, in order that the proposed postmining cropland use will remain practical and reasonable;

(b) There is sufficient water available and committed to maintain crop production; and

(c) Topsoil quality and depth are sufficient to support the proposed use. (8 Ky.R. 113; eff. 3-1-1982; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)