

405 KAR 16:210. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465 requires the cabinet to promulgate administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation establishes requirements for restoring land use capability after completion of surface mining activities and specific criteria for approval of postmining land uses that differ from the premining land use.

Section 1. General.

(1) Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

- (a) To conditions capable of supporting the uses that the areas were capable of supporting before any mining; or
- (b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

- (a) Cropland;
- (b) Pastureland;
- (c) Forest land;
- (d) Residential;
- (e) Industrial or commercial;
- (f) Recreation;
- (g) Fish and wildlife;
- (h) Developed water resources; and
- (i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use.

(1) The premining uses of land to which the postmining land use is compared shall be those uses that the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area. More than one (1) land use may exist within a proposed permit boundary.

(2)

- (a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.
- (b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved that is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)

- (a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use; or

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. The limitations in this subsection shall apply to permits issued after November 26, 1991. Portions of the permit area with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050, Section 4(3).

Section 3. 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 surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses shall be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

(8 Ky.R. 1553; eff. 1-6-1983; 18 Ky.R. 431; 1875; 2243; eff. 11-26-1991; Crt eff. 7-3-2018; 46 Ky.R. 1351, 2274; eff. 5-5-2020.)