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This is an official publication of the Commonwealth of Kentucky, Legislative Research Commission, giving public notice of all proposed regulations filed by administrative agencies of the Commonwealth pursuant to the authority of Kentucky Revised Statutes Chapter 13.

Persons having an interest in the subject matter of a proposed regulation published herein may request a public hearing or submit comments within 30 days of the date of this issue to the official designated at the end of each proposed regulation.

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Public Hearing Scheduled

DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION

A public hearing will be held at 1 p.m. EDT July 30, 1980 in the Conference Room of the Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky on the following regulation:

815 KAR 20:050. Installation permits. [6 Ky.R. 696]

Amended Regulations Now In Effect

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
As Amended

401 KAR 2:050. Hazardous waste definitions.

RELATES TO: KRS 224.890
PURSUANT TO: KRS 13.082, 224.017, 224.890
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: KRS 224.017 and 224.890 require the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the management for hazardous wastes. This regulation defines essential terms used in connection with the hazardous waste regulations.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context, terms in KRS Chapter 224 and in the hazardous waste regulations shall have the meanings given in this regulation.

(1) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a hazardous waste facility would be damaged and thereby pose a threat to human health and the environment.

(2) "Active portion" means any area of a facility where treatment, storage, recycling or disposal operations are being conducted. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the secretary.

(3) "Aquifer" means *a geological formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.* [any formation of soil, sand, gravel, limestone, sandstone, or other material, or any fracture, crevice, or void in any formation from which underground water is or may be obtained in useable quantities.]

(4) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, and/or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(5) "Cell" means a portion of a landfill which is isolated, usually by means of an approved barrier.

(6) "Closure" means the time at which a waste treatment, storage or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for post-closure monitoring and maintenance or to make it suitable for other uses.

(7) [(6)] "Container" means any portable enclosure in which a material can be stored, handled, transported, or disposed.

(8) [(7)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(9) [(8)] "Discharge" means the release of any solid or hazardous waste or any constituent thereof into the environment.

(10) [(9)] "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment, be emitted into the air or be discharged into any water, including groundwaters.

(11) [(10)] "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(12) [(11)] "Existing" means any hazardous waste site or facility that was in being or under construction on October 17, 1979.

(13) [(12)] "Final closure of a hazardous waste facility" means the procedures which must be followed by a facility owner/operator when it is determined that the facility will no longer accept hazardous waste for treatment, recycling, storage, or disposal on the entire facility.

(14) [(13)] "Final cover" means cover material, soil or other suitable material, that is applied upon closure of a hazardous waste landfill and is permanently exposed to the natural elements.

(15) [(14)] "Flash point" means the lowest temperature at which evaporation of a substance produces sufficient vapor to form an ignitable mixture with air, near the surface of the liquid. Ignitable mixture denotes a mixture that, when ignited, is capable of the propagation of flame away

from the source of ignition. Propagation of flames means the spread of the flame from layer to layer independent of the source of ignition.

(16) [(15)] "Food chain crops" means a forage or feed grain used to feed animals which are raised for human consumption, used to produce products for human consumption, or also food or tobacco crops for human consumption.

(17) "Generating" means the act or process of producing wastes except that any person who produces hazardous wastes in amounts not determined to be harmful to public health or the environment by regulation of the department consistent with the federal resource conservation and recovery act and regulations issued pursuant thereto shall not be a generator of hazardous waste or considered to be engaged in the generation of hazardous waste.

(18) [(16)] "Generator" means any person, federal agency, or state agency whose act or process produces or accumulates any [extremely] hazardous waste, *identified or listed in 401 KAR 2:075.* [any radioactive waste not exempt from these regulations, or hazardous wastes in excess of 1.3 tons annually but does not include retail establishments.]

(19) [(17)] "Generation of hazardous waste" means the act or process by which any person or state or federal agency produces hazardous waste, including hazardous residue from recycling and treatment activities.

(20) [(18)] "Groundwater" means water which is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water."

(21) [(19)] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(22) [(20)] "Hazardous waste" means any *discarded material or material to be discarded or* [waste] substance or combination of *such* [waste] substances *to be discarded,* in any form which, because of its quantity, concentration, or physical, chemical, or *infectious* [biological] characteristics, may *cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; and as defined in 40 CFR 261.3, filed herein by reference. Nothing in this chapter shall be construed to apply to any activity or substance which is subject to the federal atomic energy act of 1954 or to agricultural wastes including manures and crop residues, which are returned to the soil as fertilizers or soil conditioners, or to pesticides, herbicides or fertilizers or their respective containers when disposed of under label instructions or in accordance with the federal insecticide, fungicide, and rodenticide act as amended.* [create a threat to public health or the environment. A hazardous waste includes any substance which is toxic, ignitable, corrosive, radioactive, an irritant, a strong sensitizer, or which generates pressure through decomposition, heat or other means.]

[(a) "Extremely hazardous waste" means any hazardous waste or mixture of hazardous wastes that contains any organic substance which has a calculated human LD_{50} of less than 50 mg/kg, at a concentration in mg/L greater than or equal to 0.35 times its LD_{50} expressed in units of mg/kg. For purposes of this definition, metallic salts of organic acids containing three (3) or fewer carbon atoms are considered not to be organic substances.]

[(b) "Moderately hazardous waste" means any hazardous waste or mixture of hazardous wastes that contains any organic substance which has a calculated human LD_{50} equal to 50 mg/kg but less than 425 mg/kg. For purposes of this definition, metallic salts of organic acids containing three (3) or fewer carbon atoms are considered not to be organic substances.]

[(c)"Toxic waste" means a hazardous waste which causes adverse effects at a recognized extract concentration level.]

[(d) "Ignitable waste" means a waste which has any of the following properties:]

[1. Any liquid waste which has a flash point of less than 140 degrees Fahrenheit.]

[2. Any waste, excluding liquid waste in subparagraph 1 above and contained gas, that under conditions incident to its management is liable to cause fires through friction, absorption of moisture, spontaneous chemical changes, or retained heat from manufacturing or processing or to create a hazard during its management when ignited;]

[3. Any ignitable waste compressed gas;]

[4. Any waste which is a strong oxidizer.]

[(e) "Corrosive waste" means a waste which is an aqueous solution having a non-buffered pH less than or equal to three (3) or greater than or equal to twelve (12) or a corrosion rate greater than 0.250 inch per year of steel (SAE 1020) at a test temperature of 130 degrees Fahrenheit.]

[(f) "Radioactive waste" means any waste that exhibits radioactivity above specified levels in 902 KAR 100:080 or 902 KAR 100:085 and is not subject to the Federal Atomic Energy Act of 1954.]

[(g) "Incompatible waste" means a waste, including non-ignitable waste compressed gases, unsuitable for commingling with another waste or material, where the commingling might result in uncontrolled:]

[1. Extreme heat or pressure generation;]

[2. Fire;]

[3. Explosion or violent reaction;]

[4. Formation of substances which are shock-sensitive, friction-sensitive, or otherwise have the potential for reacting violently;]

[5. Formation or generation of toxic dusts, mists, fumes, gases, or other chemicals in such a manner that the likelihood of contamination of groundwater or escape of the substances into the environment is increased; or]

[6. Formation of any other hazardous waste as defined in this regulation.]

[(h) "Reactive hazardous waste" means a waste which, of itself, is:]

[1. Normally unstable and readily undergoes violent chemical change but does not detonate;]

[2. Capable of detonation or reaction but requires a strong initiating source or which must be heated under confinement before initiation, or which reacts explosively with air, water, or soil; or]

[3. Readily capable of detonation, explosive decomposition, or reaction at normal temperatures and pressures.]

(23) [(21)] "Hazardous waste district" means a hazardous waste management area identified by the department.

[(22) "Hazardous Waste Guidelines" means the departmental publication, filed herein by reference, available from the Division of Hazardous Material and Waste Management, detailing facility criteria and procedures, financial requirements, testing procedures and specific lists

of hazardous wastes and waste sources, extracted from the U.S. Environmental Protection Agency's proposed "Hazardous Waste Guidelines and Regulations," published in the Federal Register, December 18, 1978 (40 CFR 250).]

(24) [(23)] "Hazardous waste regulations" means those regulations relating to and pursuant to KRS 224.890.

(25) [(24)] "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, recycled, and/or disposed of by landfilling, incineration, or any other [approved] method.

(a) "Disposal facility" means any facility which disposes of hazardous waste by landfilling in a manner approved by the department.

(b) "On site" means on the same or geographically continuous property where hazardous waste generation, treatment, storage, recycling, or disposal occurs. Two (2) or more pieces of property which are divided only by a public or private right-of-way and which are otherwise geographically contiguous are considered a single site.

(c) "Off-site" means that the site at which receiving, treatment, storage, recycling, and/or disposal takes place, is separated from another site where generation, shipment, treatment, storage, recycling, and/or disposal takes place by more than the width of a public or private right-of-way.

(d) "Storage facility" means any hazardous waste facility which stores hazardous wastes. A generator who stores his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport *on-site or* off-site is not operating or maintaining a storage facility.

(e) "Treatment facility" means any facility which treats hazardous wastes, except one employing only treatment processes other than ponds and lagoons which are connected to a manufacturing process by a pipe or other fixed and enclosed means, except as may be determined by the department not to be a treatment facility.

(f) "Recycling facility" means *any facility at which hazardous waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing hazardous waste for re-use* [a facility where hazardous waste is recycled].

(g) "Landfill" means an excavated or engineered area where hazardous waste is deposited and covered according to a plan approved by the department.

[(h) "Long-lived hazardous waste disposal site" means any place at which hazardous waste is disposed of by landfilling or burial in such a manner or utilizing such techniques that such wastes so disposed may, in the technical judgment of the department, still constitute an acute threat to public health or the environment should such wastes be exposed to the environment at some time after the close of any period of post-closure care and monitoring funded by the persons or state or federal agency who owned or operated the site during its period of active use.]

(26) [(25)] "Hazardous waste facility personnel" means those agents of the owner/operator who are responsible for performing and/or overseeing operations at a hazardous waste treatment, storage, recycling or disposal facility and whose acts or failures to act may result in a threat to human health or the environment.

(27) [(26)] "Hazardous waste permit" means the written document issued by the department to the permittee pursuant to KRS 224.890 and the regulations promulgated thereto, for the act of [generation,] treatment, storage, recycling, or disposal of hazardous wastes. The permit may be for any of the above acts, and may have conditions attached.

(28) [(27)] "Incineration" means an engineered process using equipment approved by the department that uses controlled flame combustion or other methods to thermally degrade hazardous waste. Incineration is a method of treatment of hazardous waste.

(29) [(28)] "Landfarming" means application of hazardous waste onto land and incorporation into the surface soil for the purpose of attenuation. Synonyms include land application, land cultivation, land irrigation, land spreading, soil farming, and soil incorporation.

(30) [(29)] "Leachate" means *any* [the] liquid *including any suspended components in the liquid,* that has percolated through or drained from hazardous waste [or other man-emplaced materials and contains soluble, partially soluble, or miscible components, removed from such waste].

(31) [(30)] "Liner" means a layer of natural or man-made material placed beneath or over a surface impoundment or landfill which serves to restrict the movement of the wastes from within the surface impoundment or the landfill into the soil, rock or water outside of the surface impoundment or landfill.

(32) [(31)] "Manifest" means the *shipping* [principal] document *originated and signed by the generator which contains information required by 401 KAR 2:070* [used in a management control system to trace the movement of hazardous wastes from generation to final disposal].

(33) [(32)] "Monitoring" means the acts of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(34) [(33)] "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and goundwater levels.

(35) [(34)] "New" means any hazardous waste site or facility that commenced construction after October 17, 1979.

(36) [(35)] "One-hundred year flood" means a flood that has a one (1) percent or one (1) in 100 chance of recurring in any year, or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(37) [(36)] "Open burning" means the combustion of any material without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Emission of the combustion products through a stack or vent adequate for both visual monitoring and point-source sampling.

(38) [(37)] "Owner/operator of a hazardous waste facility" means the owner of an on-site or off-site hazardous waste treatment, storage, recycling or disposal facility, as well as any person with whom rests ultimate decision-making authority over the facility.

(39) [(38)] "Operational plan" means the approved plan of operations filed with the department which describes the method of operation that the permittee will use in the [generation,] treatment, storage, recycling, and/or disposal of hazardous wastes.

(40) [(39)] "Permit by rule" means that certain classes of sites or facilities are presumed to hold a permit so long as the operations of such sites or facilities do not present a threat of imminent hazard to public health or substantial environmental impact.

(41) [(40)] "Permittee" means any person holding a valid permit issued by the department to [generate,] treat, store, [recycle,] and/or dispose of hazardous waste.

(42) [(41)] "Partial closure of a hazardous waste facility" means the measures which must be taken at a facility when it is determined that the facility will no longer accept hazardous waste for treatment, recycling, storage or disposal on one (1) portion of the site.

(43) [(42)] "Post closure care" means the manner in which a facility must be maintained when it no longer accepts hazardous waste for treatment, storage, or disposal.

(44) "Post-closure monitoring and maintenance" means the routine care, maintenance and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility.

(45) [(43)] "Representative sample" means any sample of waste or groundwater which is equivalent to the total waste or groundwater in composition, and physical, biological, and chemical properties *as specified in American Society for Testing Materials' (ASTM) standards* [at an accepted level of confidence].

(46) [(44)] "Run-off" means that portion of precipitation that flows overland before entering a defined stream channel.

(47) [(45)] "Saturated zone (zone of saturation)" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled.

(48) [(46)] "Special wastes" means those wastes of high volume and low hazard which commonly include, but are not necessarily limited to, *utility wastes (fly ash, bottom ash, scrubber sludge),* mining wastes, sludge from pollution control equipment, water treatment facilities, and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, and oil production brines.

(49) [(47)] "Spill" means any accidental discharge into the environment of any substance which meets the definition of hazardous waste.

(50) [(48)] "Storage of hazardous waste" means the containment of hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of such hazardous waste.

(51) [(49)] "Storage tank" means any *manufactured* non-portable *covered device* [enclosure] used for containing *pumpable* hazardous waste.

(52) [(50)] "Surface impoundment" means [a pit, pond, lagoon, concrete basin or other basin such as open mixing tanks, clarifiers, and settling tanks] *a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.*

(53) "Termination" means the final actions taken by the department as to a solid waste or hazardous waste treatment, storage or disposal facility when formal responsibilities for post-closure monitoring and maintenance cease;

[(51) "Transport vehicle" means a motor vehicle, rail freight car, air freight carrier, freight container, cargo tank, portable tank, vessel, pipeline or any other mechanism used for the transportation of hazardous waste.]

(54) [(52)] "Transporter" means a person *engaged in the off-site transportation of* [who moves or causes to be moved by any means any] hazardous waste *by air, rail, highway or water* [regardless of any change of ownership or dominion over any such waste].

(55) [(53)] "Unsaturated zone (zone of aeration)" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(56) [(54)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(57) [(55)] "Wetlands" means those areas that are inundated by surface or groundwater with a frequency and duration sufficient to support a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

(58) [(56)] "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

JACKIE SWIGART, Secretary
ADOPTED: May 21, 1980
RECEIVED BY LRC: May 21, 1980 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
As Amended

401 KAR 2:055. Provisions, generally.

RELATES TO: KRS 224.037, 224.890
PURSUANT TO: KRS 13.082, 224.017, 224.890
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: KRS 224.017 and 224.890 require the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the generation, treatment, storage, recycling and disposal of hazardous wastes. This regulation sets forth general provisions which apply to the hazardous waste regulations with regard to applicability, scope, exceptions, variances, general prohibitions, compatibility, conflicting provisions, and severability.

Section 1. Applicability. The hazardous waste regulations shall apply to the management of all liquid, semisolid, solid, or gaseous waste defined or identified as hazardous in KRS Chapter 224 or the appropriate regulations (401 KAR 2:050, 401 KAR 2:075) by all persons and state and federal agencies who engage in the generation, treatment, storage, recycling, or disposal of such wastes, including *hazardous* substances spilled into the environment, thereby meeting the criteria of hazardous waste.

Section 2. Variance. (1) The department may grant a temporary variance from the requirements of the hazardous waste regulations if a hazardous waste is determined by the department to be either:

(a) Insignificant as a potential hazard to public health or the environment because of its small quantity, low concentration, or physical, biological, or chemical characteristics; or

(b) Handled, processed, or disposed of pursuant to regulations of another governmental agency, providing the regulations of other agencies meet the requirements of the hazardous waste regulations.

(2) A request for temporary variance from a requirement of the hazardous waste regulations shall be submitted to the department in a detailed report clearly setting forth the analyses, procedures, controls, and other pertinent data necessary to support the request. The granting of such a request by the department shall be in writing and shall specify appropriate conditions such as duration, limitations, and review procedures.

Section 3. Compatibility with *Solid Waste Disposal Act* [Public Law 94-580]. The regulations promulgated pursuant to KRS 224.890 are intended to be compatible with federal regulations adopted pursuant to *the Solid Waste Disposal Act as amended by* Public Law 94-580, the "Resource Conservation and Recovery Act of 1976," *and as amended by the Quiet Communities Act of 1978.*

Section 4. Conflicting Provisions. The provisions of the hazardous waste regulations are to be construed as being compatible with and complimentary to each other. In the event that any of these regulations are found to be contradictory, the more stringent provisions shall apply.

Section 5. Severability. In the event that any provision of KRS Chapter 224 or any regulation promulgated pursuant thereto is found to be invalid, the remaining hazardous waste regulations shall not be affected or diminished thereby.

JACKIE SWIGART, Secretary
ADOPTED: May 21, 1980
RECEIVED BY LRC: May 21, 1980 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
As Amended

401 KAR 2:060. Hazardous waste permits.

RELATES TO: KRS 224.033, 224.255, 224.855, 224.860, 224.880, 224.890
PURSUANT TO: KRS 13.082, 224.017, 224.890
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: KRS 224.880 and 224.890 require any person who generates, treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste permit from the Department for Natural Resources and Environmental Protection.

Section 1. Generators' Determination and Registration of Hazard.

(1) No person or state or federal agency shall engage in the generation of waste without having made a determination, based upon examination of *401 KAR 2:075* [the definitions, characteristics, and determination guidelines], that the waste is hazardous or non-hazardous; and

(2) If the waste *is* [appears to be] hazardous, the generator shall register [his intent to apply for a hazardous waste permit] with the department. Such registration shall be filed within ninety (90) days after the effective date of these regulations and shall include:

(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes generated annually; and

(b) The place of generation and the name and address of a contact agent.

(3) If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after the effective date of these regulations file a report, according to procedures previously approved by the department, which details, by geographic area, the known or anticipated types, potential sources, general characteristics, and weights or volumes of special wastes generated annually.

(4) If an existing hazardous waste site or facility engages in the treatment, storage or disposal of hazardous waste, the owner/operator shall register his intent to apply for a hazardous waste permit with the department. Such registration shall be filed within ninety (90) days after the effective date of these hazardous waste regulations and shall include:

(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous or special wastes generated, received, or handled annually;

(b) Information on the name, mailing address, legal structure, and ownership of the site or facility;

(c) Site information which details the location, watershed, area, and other attributes;

(d) Geologic and soils information;

(e) Hydrologic information;

(f) Land use and population information; and

(g) Description of the operation.

(5) If, during the review of the registration information submitted pursuant to subsection (3), the department determines that there is a threat of imminent hazard to public health or substantial environmental impact, the existing hazardous waste site or facility may be required to fully comply with requirements of Sections 2 and 3.

Section 2. Permit Required. (1) No person or state or federal agency shall engage in the [generation,] treatment, storage, [recycling,] or disposal of hazardous waste without having first obtained a permit or a temporary variance from the department or, in the case of generators *and recyclers,* having registered with the department.

(2) A permit shall authorize the permittee to engage in the [generation,] treatment, storage, [recycling] or disposal of hazardous waste in a manner prescribed by the department for a period of one (1) year from the date of issuance.

(3) All existing authorizations or letters of permission to dispose of hazardous waste issued by the department shall become null and void ninety (90) days after the effective date of the hazardous waste regulations.

(4) Generators, *recyclers and existing hazardous waste facilities* not registered with the department, *shall register or apply for* [and existing hazardous waste sites or facilities shall apply for a hazardous waste permit or] a temporary variance within six (6) months after the effective date of these regulations.

(5) No new hazardous waste site or facility shall commence construction or operation without having first obtained a permit.

(6) Special waste sites or facilities *and existing hazardous*

waste facilities registered with the department are hereby granted a permit by rule. However, if the operation of a site or facility would cause a threat of imminent hazard to public health or substantial environmental impact, the site or facility may be required to fully comply with the requirements of Section 3.

(7) The permit *or registration* shall confer upon the owner/operator a qualified right to generate, treat, store, recycle, or dispose of hazardous waste, but shall not relieve the owner/operator of responsibility to comply with all applicable federal, state, and local laws and regulations.

Section 3. Application for a Hazardous Waste *Facility* Permit. A person or state or federal agency desiring a hazardous waste permit shall submit to the department:

(1) A complete application on a form provided by the department.

(2) An operational plan addressing:

(a) Known or anticipated types, potential sources, general characteristics and weights or volumes of hazardous wastes generated, received or handled annually.

(b) The designated capacity and expected life of equipment to be used and/or site to be used by the permittee.

(c) A list of operating equipment which the facility will utilize to comply with these regulations.

(d) A general description of the operational procedures to be conducted including procedures that will ensure compliance with KRS Chapter 224, and that will protect public health and the environment.

(e) A general description of procedures for shipping, receiving and identifying hazardous wastes; for deployment of qualified personnel; and for supervision of handling and disposing of hazardous waste.

(f) A description of procedures planned for final or partial closure of any hazardous waste disposal site.

(g) Closure and post-closure monitoring and maintenance cost estimates.

(h) A description of security measures to keep unauthorized persons from entering the site and to prevent unpermitted use.

(3) A contingency plan addressing:

(a) Actions that will be taken in the event of fire, explosion, accidental discharge, or other accident;

(b) The equipment and manpower available to correct effects of an accident or accidental discharge; and

(c) Emergency procedures for evacuating employees and notifying agencies responsible for providing services during emergencies.

(4) Physical information on the proposed site or facility consisting of, but not limited to:

(a) A map *bearing the stamp of a professional engineer registered in Kentucky* drawn to an appropriate scale showing the following:

1. Existing topographical contours of the property;
2. Proposed final elevations of any completed disposal site;
3. Legal boundaries for which clear title or lease is held by the person desiring the permit;
4. Locations of permanent access and permanent internal roads;
5. Location and type of fencing;
6. Locations of points of waste generation, loading facilities, unloading facilities, storage facilities, equipment cleaning areas and disposal areas;
7. Locations and descriptions of environmental monitoring stations;
8. Locations of structures, equipment or facilities for control of surface or subsurface drainage, leachate or landfill gases; and
9. Locations of power lines, pipelines, and easements through the hazardous waste site or facility.

(b) A geological report of the site including but not limited to:

1. A description of all soils at the site in detail identifying the suitability for the proposed use;
2. A description of the surface and subsurface geology of the site, including an assessment of such geological hazards as: seismic activity, subsidence, or stability; and
3. A description of the hydrologic characteristics of the site, including surface and ground water current use, potential use, and flow.

(c) All land uses and zoning contiguous with the location of hazardous waste generation and within *the area affected by any* [one quarter (¼) mile of the perimeter of] hazardous waste treatment, storage, recycling, or disposal facilities.

(d) All necessary local governmental approvals.

(5) A statement of zoning approval for the hazardous waste treatment, storage, recycling, or disposal facility signed by the appropriate authority.

(6) A verified affidavit from the publishing newspaper certifying the time, place, and content of the applicant's advertisement in accordance with KRS 224.855, for a hazardous waste treatment, storage, recycling, or disposal facility.

(7) Proof of financial responsibility and plan for meeting any bonding requirements required by KRS 224.890 and by Section 4.

(8) Environmental compatability document for a hazardous waste disposal facility.

Section 4. Closing Trust Fund; Post-Closure Trust Fund; Financial Responsiblity. Prior to issuance of a hazardous waste permit, the applicant shall establish a trust fund for the amount of the estimated closure cost; establish a trust fund for post-closure monitoring and maintenance which is to be built up over the life of the site or over twenty (20) years, whichever is shorter; and provide evidence to the department of the necessary financial responsibility for injuries to persons or property sustained as a result of an escape or release of hazardous waste.

(1) For *treatment, storage and disposal* [each facility], before a permit can be issued, the applicant shall deposit into a closure trust fund as a condition of receiving a permit a cash deposit satisfactory to the department equal to the cost estimate for closure. *The acceptable method for determination of this amount is found in 40 CFR Part 265.142 filed herein by reference.* [An acceptable method for determination of this amount is found in the "Hazardous Waste Guidelines," financial requirements.]

(2) For *disposal* [each] facility, before a permit can be issued, the applicant shall establish a post-closure trust fund. The annual cost of post-closure monitoring and routine maintenance will be determined by the department based on cost estimates provided by the applicant and other sources. The annual post-closure monitoring and maintenance cost will be paid into the post-closure trust fund, at a rate *as* determined in *40 CFR Part 265.144* ["Hazardous Waste Guidelines," financial requirements,] or at some other rate satisfactory to the department which will ensure the availability of the necessary funds for monitoring and maintenance after the facility has closed.

(3) For each facility, before a permit shall be issued, the applicant must show evidence of financial responsibility, in an amount and for a time period specified by the department.

[(4) In the case of generation permits, a bond shall be required in an amount specified by the department. The

bond shall be sufficient to provide for the cleanup of spills of hazardous waste at the generating facility or during transport, based on the character, quantity, and routing of the waste. In a particular instance where the circumstances are such as to warrant an exception to this provision, the department may accept other evidence of financial responsiblity for spill cleanup.]

Section 5. Issuance of Hazardous Waste Permit. [(1) After receiving a permit application, operational plan, contingency plan, site information, and proof of financial responsibility, the department shall determine whether this proposed facility is a long-lived hazardous waste disposal site, and if not, the department shall issue a hazardous waste permit, specify modifications that must be made as a prerequisite for issuance of a permit, or deny the permit. If the proposed facility is determined to be a long-lived hazardous waste disposal site, the requirements of KRS 224.855(5) and (6) must be met.]

(1) [(2)] The department may issue a hazardous waste permit upon finding that the person or state or federal agency desiring the permit has met all the requirements for application and has the ability to meet the operational requirements of the hazardous waste regulations. Past performance in related areas will be considered in the review and in the determination of any requirement for specialized permit conditions. An application for a permit may be denied or an active permit revoked for failure to comply with applicable state statutes or regulations, including but not limited to any failure to provide or maintain adequate financial responsibility.

(2) [(3)] The department shall act on the permit application within ninety (90) days of receipt or shall, within that time period, inform the applicant of a projected schedule for review.

Section 6. Termination and Renewal of Hazardous Waste Permit. (1) A hazardous waste permit shall automatically terminate at the end of one (1) year. A shorter period may be specified.

(2) A hazardous waste permit may be renewed. Renewal requests shall be made to the division not less than ninety (90) days prior to the permit expiration date *and shall include any changes or modifications in the approved plan of the operation of the facility.*

(3) The department, in issuing a renewal, shall consider:

(a) Whether all conditions of the expiring permit are being met;

(b) Whether any necessary modification of the original permit conditions is being met;

(c) New or updated information required by the department that is necessary for re-evaluating the permit's suitability for re-issuance; and

(d) All information considered in issuance of the original permit.

(4) Approval of any compliance schedule for meeting permit conditions or necessary changes in permit conditions does not constitute a waiver of the department's right to initiate enforcement action for a permittee's noncompliance with KRS Chapter 224 and the hazardous waste regulations.

Section 7. Conditions of Hazardous Waste Permit. (1) The owner/operator shall comply with the requirements of all applicable state laws and regulations as well as any special conditions imposed by the department.

(2) The department may issue a permit subject to special conditions which include but are not limited to:

(a) Types of hazardous wastes which may be accepted or disposed;

(b) Special operating conditions;

(c) Schedules of compliance for corrective actions;

(d) Procedures, conditions, and changes necessary to comply with the requirements of the hazardous waste regulations and of KRS Chapter 224; or

(e) The issuance of any other applicable departmental permits.

(3) The owner/operator shall handle a waste as a hazardous waste if the manifest indicates that the waste is hazardous.

Section 8. Display of Hazardous Waste Permit. The hazardous waste permit or notice of temporary variance shall be conspicuously displayed at the hazardous waste facility. In the case of generators, *recyclers and existing hazardous waste facilities certificate* [the permit or acknowledgement] of registration in accordance with Section 1 shall be displayed at the generator's, *recycler's or facility's* place of business.

Section 9. Prohibition of Use of Unpermitted Facility. Ninety (90) days after the effective date of the hazardous waste regulations, no person shall deliver hazardous waste to a facility for treatment, storage, recycling, or disposal unless the owner/operator has:

(1) *Registered with* [Applied to] the department *as* [for] *an* [a] *existing hazardous waste facility* [hazardous waste permit for a facility] in operation at the effective date of the hazardous waste regulations, or

(2) Been granted a hazardous waste permit by the department.

(3) Registered as a recycling facility.

Section 10. Modification of Hazardous Waste Permit to Include New Conditions. The department may at any time modify a permit issued pursuant to these regulations to include new conditions required to comply with the requirements of the hazardous waste regulations, KRS Chapter 224, or any other applicable state statutes or regulations. The modification may include a time schedule for implementing the new conditions.

Section 11. Modification of Processing Methods or Proposed Closure by Owner/Operator. (1) The owner/operator shall notify the department in writing of any facility closing anticipated to last one (1) year or longer, or of any proposed significant change of processing, disposal, or method of operation from that described in the operation plan thirty (30) or more days before the proposed date of the closing or change.

(2) The owner/operator shall not proceed with the closing or change without written approval of the department.

(3) The department shall respond to the owner/operator within thirty (30) days of the receipt of the notice of proposed closing or change.

Section 12. Change of Owner/Operator. Hazardous waste permits are non-transferable absent written approval by the department. Any proposed new owner/operator may be required to submit an application as described in this regulation.

JACKIE SWIGART, Secretary

ADOPTED: May 21, 1980

RECEIVED BY LRC: May 21, 1980 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
As Amended

401 KAR 2:065. Inspections, hearings and penalties.

RELATES TO: KRS 224.032, 224.033, 224.071, 224.081, 224.083, 224.890, 224.996
PURSUANT TO: KRS 13.082, 224.017, 224.890
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with KRS Chapter 224 or the regulations promulgated pursuant thereto. KRS 224.996 permits the Department for Natural Resources and Environmental Protection to assess civil and criminal penalties against any person who fails to perform any duties imposed by KRS Chapter 224, the regulations promulgated pursuant to KRS Chapter 224, or any determination or order of the department.

Section 1. Enforcement. The requirements of this regulation shall be enforced by the secretary or any duly authorized representative of the department.

Section 2. Inspections. (1) The secretary or any duly authorized representative of the department upon presentation of proper identification and authority may:

(a) Enter any premises *registered* [permitted] to generate hazardous waste, [or] any permitted hazardous waste facility, *or any premises or facility that the department has reasonable cause to believe is generating hazardous waste or constitutes an unpermitted hazardous waste facility,* inspect the premises, and gather evidence on existing conditions and procedures;

(b) Obtain from any permittee, or from any permitted premises, representative samples of waste;

(c) Conduct tests, analyses and evaluations to determine whether the requirements of the hazardous waste regulations and KRS Chapter 224 are being met;

(d) Obtain samples of any containers and photographs or facsimiles of container labels;

(e) In the event that any samples are obtained prior to leaving the premises, a receipt describing the samples obtained shall be given to the owner, operator, or agency in charge and if requested, a portion of each such sample equal in volume or weight to the portion retained. A copy of the results shall be furnished to the owner, operator or agency in charge if an analysis is made.

(f) [(e)] Inspect and copy any pertinent records, reports, information or test results relating to the requirements of this regulation; and

(g) [(f)] Enter and inspect any other premises in accordance with the requirements of KRS 224.033(10).

(2) A report listing any deficiencies found during the inspection shall be prepared by the inspector and shall be kept on file in the department. A copy of the report shall be provided to the owner/operator or his agent upon completion of the inspection.

Section 3. Deficiencies. (1) The department shall notify the owner/operator of any noncompliance with the requirements of these regulations, with guidelines adopted pursuant thereto, or with conditions of the permit.

(2) The owner/operator shall submit to the department a plan of correction to be implemented within a time acceptable to the department.

(3) If the owner/operator fails to accomplish an agreed upon step in the plan of correction within the time period specified, the secretary may take action to modify, suspend, discontinue, or revoke the owner/operator's permit(s).

Section 4. Modification, Suspension and Revocation of a Permit. The department may modify, suspend or revoke a permit issued pursuant to this regulation for: (1) Violation of any requirement of KRS Chapter 224 or the respective regulations promulgated pursuant thereto.

(2) Aiding, abetting or permitting the violation of any provisions of these regulations.

(3) Any action or omission associated with maintenance and operation of the facility that could create a threat to public health or the environment.

(4) Violations of a condition or a variance of the hazardous waste permit.

(5) Misrepresentation or omission of a significant fact by the operator either in the application for the permit or in information subsequently reported to the department.

(6) Failure to comply with an order issued by the department.

Section 5. Hearings. (1) Except for special hearings pursuant to KRS 224.071, any person or state or federal agency aggrieved by the actions of the department may by written notice request that a hearing be conducted by the department. The right to demand such a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had such notice. Unless the request is frivolous, the department shall schedule a hearing before the department not less than twenty-one (21) days after notice of demand for such a hearing, unless the person complained against waives in writing the twenty-one (21) day period. The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for the granting of the hearing.

(2) Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a pre-hearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the pre-hearing conference by stipulation, agreed settlement, consent order, or default for nonappearance.

(3) Administrative hearing procedure:

(a) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(b) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissable thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give ef-

fect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures of taking evidence, including but not limited to the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. The department may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(d) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the secretary. The order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer and the department or issue his own written order based on the report and recommended order.

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension.

(f) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(g) A final order of the department shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the department and the facts and law upon which the decision is based.

(h) There shall be no ex-parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085.

Section 6. Order for Discontinuance, Abatement, or Alleviation. The secretary may, when he finds after investigation that it would be prejudicial to the interests of the people of the state to delay action, issue an order for discontinuance, abatement, or alleviation of a condition or activity without prior hearing as provided in KRS 224.071.

Section 7. Discontinuance of a Permit. (1) The secretary may order the discontinuance of a permit prior to any hearing when he determines such action is necessary to protect public health and safety and the environment from imminent danger.

(2) The secretary, or his authorized designee, shall notify the owner/operator of the hazardous waste facility of the discontinuance and the effective date thereof and, at the same time, shall provide the owner/operator with an explanation of the basis of the discontinuance.

(3) The owner/operator shall take prompt action to correct the deficiencies cited by the department.

(4) The suspension shall remain in effect until the deficiencies are corrected to the satisfaction of the department or until the department makes a final determination based on the outcome of a hearing held in accordance with the requirements of KRS 224.071. The determination may result in termination of the order, suspension, or modification of the permit, or revocation of the permit.

Section 8. Petition for Reinstatement. An owner/operator whose permit has been suspended or revoked may petition the department for reinstatement after thirty (30) days or more have elapsed from the effective date of the suspension or revocation or from the date of the denial of a similar petition *or immediately* [and] after the conditions of Section 7(4) have been met.

Section 9. Penalties. Any person or state or federal agency who violates any of the applicable provisions of KRS 224.890 or who violates any determination, order, or regulation adopted pursuant thereto, shall be subject to civil *or criminal* penalties as set forth in KRS 224.996(5) *and (6).*

JACKIE SWIGART, Secretary

ADOPTED: May 21, 1980

RECEIVED BY LRC: May 21, 1980 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
As Amended

401 KAR 2:070. Record keeping, operating standards and reporting procedures.

RELATES TO: KRS 224.071, 224.255, 224.890
PURSUANT TO: KRS 13.082, 224.017, 224.033, 224.890
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: KRS 224.890 requires the Department for Natural Resources and Environmental Protection to promulgate regulations to establish reporting procedures, record keeping procedures and operating standards, for the generation, storage, treatment, recycling and disposal of hazardous wastes.

Section 1. Manifest. *(1) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site.*

(2) A generator must designate on the manifest one (1) facility which is permitted to handle the waste described on the manifest.

(3) A generator may also designate on the manifest one (1) alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(4) The manifest must contain all of the following information:

(a) A manifest document number;

(b) The generator's name, mailing address, telephone number, and identification number;

(c) The name and identification number of each transporter;

(d) The name, address, and identification number of the designated facility and an alternate facility, if any;

(e) The description of the waste(s) (e.g., proper shipping name, etc.) required by regulations of the U. S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203, filed herein by reference;

(f) The total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle.

(5) The following certification must appear on the manifest: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U. S. Department of Transportation, the U. S. Environmental Protection Agency, and the Kentucky Department for Natural Resources and Environmental Protection."

(6) The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one (1) copy each for their records and another copy to be returned to the generator.

(7) The use of the manifest shall be required upon public notice by the department.

(8) The department's manifest form shall be used for intra-state shipments of hazardous waste and for shipments originating outside the state but destined for treatment, storage or disposal within Kentucky. For shipments of hazardous waste originating within Kentucky but bound for treatment, storage or disposal outside the state, the receiving state's manifest may be used providing that it meets the requirements of this section.

[(1) A manifest in a format approved by the department shall be utilized for recording information on all liquid, solid, semi-solid or gaseous hazardous wastes transported to hazardous waste handling facilities, storage facilities, treatment facilities, recycling facilities, transfer stations or disposal sites. A manifest is not required for the transport of special waste.]

[(2) All applicable sections of each manifest shall be accurately, completely, and legibly filled out.]

[(3) The manifest shall be carried by any person who transports hazardous waste on a public road, railroad, water or by any other means.]

[(4) The use of the manifest shall be required upon notification by the department.]

Section 2. Manifest and Other Procedures for Generators. *(1) The generator must:*

(a) Sign the manifest certification by hand; and

(b) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(c) Retain one (1) copy.

(2) The generator must give the transporter the remaining copies of the manifest.

(3) For shipment of hazardous waste within the United States solely by railroad or solely by water (bulk shipments only), the generator must send three (3) copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each transporter.

(4) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable U. S. Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179, filed herein by reference.

(5) Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable U. S. Department of Transportation regulations on hazardous materials, under 49 CFR 172, filed herein by reference.

(6) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable U. S. Department of Transportation regulations on hazardous materials under 49 CFR 172; filed herein by reference.

(7) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR 172.304, filed herein by reference. The following words and information shall be displayed: "Hazardous Waste—Kentucky Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the Division of Hazardous Material and Waste Management, Frankfort, Kentucky.
Generator's Name and Address _____;
Manifest Document Number _____."

(8) Before tansporting hazardous waste or offering hazardous waste for transportation off-site, a generator must offer the initial transporter the appropriate placards according to U. S. Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F, filed herein by reference.

(9) A generator may accumulate hazardous waste on-site without a permit for ninety (90) days or less, provided that:

(a) All such waste is shipped off-site in ninety (90) days or less;

(b) The waste is placed in containers which meet the standards of this section;

(c) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(d) Each container is properly labeled and marked according to this section;

(10) A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the requirements of this regulation.

[(1) The generator of any hazardous waste to be disposed of off-site shall complete and sign the generator of waste section of the manifest, and label and placard each shipment.]

[(2) The generator shall describe the wastes accurately. This description shall include the type of waste, chemical composition, special handling instructions and any other information deemed necessary by the department.]

[(3) The generator shall indicate on the manifest whether the waste is hazardous or extremely hazardous as delineated in 401 KAR 2:075.]

[(4) Before any shipment of hazardous waste is transported on a public road, the generator shall write the proper shipping name on the manifest as required by the Kentucky Department of Transportation in 601 KAR 1:005.]

[(5) Before any shipment of extremely hazardous waste is transported on a public road, the generator, in addition to completing the manifest as required by this regulation, shall inform the department by a previously agreed upon procedure, such as outlined in "Hazardous Waste Guidelines," records and procedures.]

[(6) The generator shall have retained the waste generator's copy of the completed manifest prior to removal of the waste from the generator's facility.]

[(7) The generator shall provide that the manifest, with the generator and transporter sections completed, accompany hazardous waste during transport and be delivered to the hazardous waste site or facility with the waste.]

[(8) With the manifest sections properly completed, the generator shall submit to the hazardous waste transporter an original and copies of the manifest for shipment of hazardous waste.]

[(9) The generator of hazardous waste shall submit to the department each week, or on such other schedule as approved by the department, a summary or a legible copy of each manifest or both issued during the previous week or designated time period, including manifests for shipments to be delivered out of the state.]

Section 3. Manifest Procedures for Owner/Operator of Treatment, Storage, Recycling, or Disposal Facility. (1) The owner/operator of an off-site hazardous waste facility shall ensure that hazardous waste delivered to the receiving facility has essentially the same general properties and quantities as identified by the generator on the manifest, except in the case of an on-site facility operated solely for and by a generator.

(2) The owner/operator of a hazardous waste facility shall require that the generator and transporter sections of the manifest be completed before the hazardous waste shall be accepted.

(3) The off-site hazardous waste facility owner/operator shall complete the applicable section of the manifest, retain a copy, and send the completed original to generator of the hazardous waste.

(4) The owner/operator shall send legible copies of all completed hazardous waste manifests or other reports to the department on a current weekly basis, or on such other schedule as approved by the department, including manifests for shipments received from out of state.

Section 4. Personnel Requirements for Facility Operation. (1) The owner/operator of a hazardous waste facility shall maintain such personnel at the facility as are necessary to provide effective and timely action with regard to facility operations, maintenance, environmental controls, records, emergencies, and health or safety.

(2) The owner/operator shall provide at the facility at least one (1) qualified person who is capable of conducting field tests of wastes for, at a minimum, pH and flammability at the time hazardous waste is accepted.

(3) The owner/operator of a hazardous waste facility shall provide adequate supervision to ensure that the operation of the facility and other activities carried out on the premises are in compliance with all applicable laws, regulations, permit conditions and other requirements. The owner/operator shall keep the department, local fire officials, and State Fire Marshal currently advised of the names, addresses, and telephone numbers, including emergency telephone numbers, of the owner/operator, manager, and supervisor.

Section 5. Equipment Requirements for Owner/Operator. (1) Hazardous waste facilities shall be designed, equipped and operated to prevent discharge of hazardous wastes outside of areas designated in the operational plan, and to prevent hazards to public health and the environment.

(2) Equipment used to handle, treat, store or dispose of hazardous waste shall be designed to avoid an uncontrolled reaction, fire, explosion, or discharge of hazardous waste.

(3) If an on-site water supply is used for controlling dust and fires, cleaning equipment or other purposes, and does not meet all health standards for drinking water, all faucets or taps shall be clearly labeled: "Polluted—Not Safe For Human Use."

(4) If a public water supply is used at the facility, the service connection shall be protected from contamination as specified by the department in 401 KAR 6:015, pertaining to public water supply requirements.

(5) The owner/operator shall provide or otherwise require special equipment such as lifts, ramps, and lines to remove containerized hazardous waste from vehicles and containers, if necessary to prevent hazards to public health and the environment.

(6) Hazardous waste facilities shall not be open to public except by permission of the department. Access roads leading to areas where hazardous wastes are handled, treated, recycled, stored, or disposed shall be clearly marked with notices that are legible from a distance of at least twenty-five (25) feet, and warn of the presence of hazardous wastes. Signs or traffic controllers shall be strategically located to prevent the public from being exposed to hazardous wastes.

Section 6. General Operating Standards for Facilities. (1) The owner/operator of a hazardous waste facility shall operate the facility in accordance with the requirements of KRS Chapter 224, and the regulations promulgated pursuant thereto, the conditions of the hazardous waste facility permit issued by the department, and the operational plan filed with the department.

(2) Hazardous waste shall be handled, treated, recycled, stored, or disposed of only within the hazardous waste area

designated in the operational plan filed with the department unless otherwise specified.

(3) The owner/operator shall ensure that methods used to handle, treat, store, recycle or dispose of hazardous waste at the hazardous waste facility are designed to avoid:

(a) Discharge of hazardous waste outside the designated hazardous waste area;

(b) Movement of hazardous waste to an area outside the hazardous waste area;

(c) Exposure or contamination of a person by hazardous waste; and

(d) Creating a hazard to public health or the environment.

(4) To prevent hazardous waste from being blown by wind, hazardous waste in the form of powder, dust, or a fine solid should be handled, treated, stored and disposed of in covered containers or, if the waste is not water reactive, shall be wetted sufficiently to eliminate airborne dispersal in conformance with other permit requirements.

(5) Hazardous wastes that are capable of releasing hazardous gases, mists or vapors in excess of existing air quality standards or where the emitted hazardous wastes could result in a hazard to public health or the environment shall not be deposited in open pits, ponds, lagoons, storage or disposal areas or containers.

(6) Containers holding hazardous wastes shall not be opened, handled, emptied or disposed of in a manner which may rupture the containers or cause them to leak, unless the precautions taken preclude fires, contamination of persons by hazardous waste, discharge of hazardous waste outside the hazardous waste area or movement of hazardous waste to an area outside the hazardous waste area.

(7) Unless decontaminated in a manner approved by the department, empty containers contaminated with hazardous materials shall be stored, handled, processed and disposed as hazardous wastes in compliance with hazardous waste regulations.

(8) The owner/operator of a hazardous waste facility shall expedite collection of hazardous waste that is accidentally discharged from designated storage, processing or disposal areas. The owner/operator shall also collect soil contaminated by such discharge. The owner/operator shall handle and dispose of such waste and soil as hazardous wastes in compliance with these regulations and the approved operational plan.

(9) The hazardous waste facility shall be operated in such a manner as to minimize the chance of fire and explosions and with adequate provisions for prompt fire control.

(10) The owner/operator shall make provisions to prevent personnel from wearing clothing that is contaminated with hazardous waste and provide adequate decontamination facilities.

(11) Equipment used at hazardous waste facilities, including but not limited to storage containers, processing equipment, trucks, loaders, dozers, and scrapers, that are contaminated with hazardous waste shall be decontaminated prior to being serviced or used in an area not used for hazardous waste. Contaminated wash water, waste solutions or residues generated from washing or decontaminating the equipment shall be collected and disposed of as hazardous wastes in compliance with these regulations.

(12) Salvaging of hazardous waste shall be permitted only as described in the operational plan, provided that salvaging does not create nuisances or hazards to public health or safety or the environment.

Section 7. Additional Standards for Storage *Facilities* of Hazardous Waste. (1) No person or state or federal agency shall store a hazardous waste without written permission from the department.

(2) Any person who stores a hazardous waste longer than ninety (90) days shall have obtained a permit or temporary variance for storage from the department.

(3) The department may require that hazardous waste stored longer than ninety (90) days be removed and disposed of in a manner acceptable to the department.

(4) Hazardous waste in storage for less than ninety (90) days shall be removed and disposed of in a manner acceptable to the department if so ordered by the secretary pursuant to KRS 224.071.

(5) Storage of water-reactive or water-soluble hazardous wastes as identified by the department shall be in a raintight and waterproof *container or* area.

(6) Containers used for storing hazardous waste shall be such that containers can be transported, handled, or moved safely, and without spillage.

(7) Storage of hazardous waste shall be in a secure enclosure, including but not limited to, a building, room or fenced area, which shall prevent unauthorized persons from gaining access to the waste and in such a manner that will minimize the possibility of spills and escape from the area of storage. A caution sign shall be posted and shall be visible from any direction of access or view of hazardous waste stored in such enclosure. Wording of caution signs shall be: "Caution—Hazardous Waste Storage Area—Unauthorized Persons Keep Out."

(8) A label shall be maintained on all containers and storage tanks in which hazardous wastes are stored. Labels shall include the following information:

(a) Identification number;

(b) Composition and physical state of the waste;

(c) Special safety recommendations and precautions for handling the waste;

(d) Statements which call attention to the particular hazardous properties of the waste;

(e) Name and address of the person generating the waste; and

(f) Date of acceptance at the storage facility.

(9) Records shall be maintained on all containers and storage tanks during the term of storage. The records shall include the following information:

(a) An identification number which appears on the label;

(b) Composition and physical state of the waste;

(c) Amount of waste;

(d) Name and address of the person producing the waste; and

(e) Date of acceptance at the storage facility.

Section 8. Operation Requirements for Owner/Operator of a Disposal Site. (1) [Extremely hazardous wastes,] Flammable wastes, water-reactive wastes and strong oxidizers shall not be applied directly to the working face of a landfill. Such wastes shall be deposited behind the working face in trenches or wells at landfill sites pursuant to the conditions of the hazardous waste permit.

(2) The department may require the owner/operator to remove from the disposal site and properly dispose of any hazardous waste if the disposal of the waste is not consistent with the requirements of this regulation and conditions specified by the department in the hazardous waste permit.

(3) Hazardous waste that has been deposited in a hazardous waste area shall not be excavated, removed or recovered without written approval of the department. All

subsequent handling, treatment, storage, recycling, or disposal of such hazardous waste shall be in conformance with this regulation. A complete manifest shall accompany the wastes if transported to an off-site hazardous waste facility, and applicable permits shall be required pursuant to 401 KAR 2:060.

(4) Burning wastes shall not be *disposed of* [deposited] within a hazardous waste disposal site.

(5) Forbidden or Class A explosive wastes as defined in Title 49, Code of Federal Regulations, Sections 173.51 and 173.53, or identified by the department, shall not be disposed *of* on land. Such wastes shall be destroyed or used so as not to present a hazard to public health or the environment.

[(6) The department may require that any extremely hazardous waste be treated before it is disposed.]

(6) [(7)] Any person or state or federal agency who generates, treats, stores, recycles or disposes of hazardous wastes shall not create a situation where incompatible wastes, as defined in 401 KAR 2:050, can come in contact with each other.

(7) [(8)] Storage and transportation containers holding wastes which might be incompatible shall be separated from each other or protected from each other, in order to prevent the wastes from mixing should the containers break or leak prior to disposal according to the operating plant.

(8) [(9)] The owner/operator of a hazardous waste facility shall not accept hazardous wastes from generators and transporters not in compliance with applicable state and federal laws and regulations.

Section 9. Records. (1) Hazardous waste facility owner/operators shall maintain at their facility, for a period of not less than three (3) years, the following information:

(a) The names, addresses, and telephone numbers of the waste generator, transporter, processor and disposal site owner/operator of each shipment of hazardous waste transported, received, or stored;

(b) The source, identity, chemical composition, volume, physical state, container type and hazardous properties of each shipment of waste received, transported, or stored at the site;

(c) The method used to process or dispose of each waste; and

(d) The date that each hazardous waste was received for storage or disposal.

(2) Copies of completed manifests may serve the purpose in subsection (1)(a) through (d).

(3) The owner/operator of a hazardous waste disposal facility shall record on a grid or other suitable map the general disposal locations of hazardous wastes. The hazardous waste types shall be identified on the grid or map by types of waste, including but not limited to, acid solution, alkaline solution, pesticides, paint sludge, solvent, tetraethyl lead sludge, tank bottom sediment, contaminated oil and sand and plating waste. The record shall be permanently maintained.

(4) The owner/operator of a hazardous waste disposal facility shall maintain such other permanent summary and special records as required by the department.

Section 10. [Weekly] Reports by Owner/Operator of Hazardous Waste Disposal Facility. The owner/operator of a hazardous waste disposal facility shall submit a report to the department [by the last day of each week, or on such schedule as approved by the department,] showing the identity, source, chemical composition, weight or volume, physical state, container type, hazardous properties and method used to dispose of each waste. *The reports should not be required more frequently than once per quarter.*

Section 11. Accident Reports. Owner/operators of hazardous waste facilities shall report to the department any incident or accident within two (2) hours of the time of occurrence, which results in or could result in the discharge of hazardous waste. The department may require that a written report of the incident or accident be provided within ten (10) days.

Section 12. Generator Recordkeeping and Reporting. (1) A generator must keep a copy of each manifest signed in accordance with Section 2(1) for three (3) years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three (3) years from the date the waste was accepted by the initial transporter.

(2) A generator must keep a copy of each annual report and exception report for a period of at least three (3) years.

(3) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with 401 KAR 2:075 for at least three (3) years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(4) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary.

(5) A generator who ships his hazardous waste off-site must submit annual reports:

(a) On a form approved by the department according to the instructions on the form;

(b) To the department;

(c) No later that March 1 for the preceding calendar year.

(6) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes.

(7) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(8) A generator must submit an exception report to the department if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter. The exception report must include:

(a) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(b) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(9) The secretary may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 401 KAR 2:075.

Section 13. International Shipments. (1) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the United States must comply with the requirements of this section.

(2) When shipping hazardous waste outside the United States the generator must:

(a) Notify the department in writing four (4) weeks before the initial shipment of hazardous waste to each country in each calendar year. The waste must be identified by its hazardous waste identification number and its U. S. Department of Transportation shipping description;

(b) Require the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose;

(c) Meet the requirements under Section 1 for the manifest, except that:

1. In place of the name, address, and identification number of the designated facility, the name and address of the foreign consignee must be used;

2. The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

(3) A generator must file an exception report, if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter; or

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(4) When importing hazardous waste, a person must meet all requirements of Section 1 for the manifest except that:

(a) In place of the generator's name, address and identification number, the name and address of the foreign generator and the importer's name, address and identification number must be used.

(b) In place of the generator's signature on the certification statement, the U. S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

Section 14. Farmers. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this regulation or other standards in 401 KAR 2:060 for those wastes provided he triple rinses each emptied pesticide container and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

JACKIE SWIGART, Secretary
APPROVED: May 21, 1980
RECEIVED BY LRC: May 21, 1980 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
As Amended

401 KAR 2:075. Identification and listing of hazardous waste.

RELATES TO: KRS 224.890
PURSUANT TO: KRS 13.082, 224.017, 224.890
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: KRS 224.890(2) requires the Department for Natural Resources and Environmental Protection to identify the characteristics of and *to* list hazardous wastes.

Section 1. Hazardous Waste Identification. *The criteria for identifying the characteristics of hazardous wastes are as described in 40 CFR 261, filed herein by reference.* [The potential for any waste to be identified as having a hazardous property shall be determined by:]

[(1) Toxicity testing, using a recognized toxicant extraction procedure such as shown in the "Hazardous Waste Guidelines," to test a representative sample of waste and comparison of the test results with established toxicity parameters as shown in the "Hazardous Waste Guidelines."]

[(2) Ignitability testing, using a flash point test apparatus and a recognized procedure such as shown in the "Hazardous Waste Guidelines" to test a representative sample of any liquid waste for a flash point of less than 140 degrees Fahrenheit; any waste compressed gas or waste other than liquid, which is considered ignitable either by listing in recognized reference publications or by other tests; or any waste that will oxidize strongly as determined by recognized criteria, such as shown in the "Hazardous Waste Guidelines."]

[(3) Corrosiveness testing, using a recognized test for pH such as shown in the "Hazardous Waste Guidelines" to test a representative sample of any aqueous waste for a pH of less than three (3) or greater than twelve (12); and, by using a standard testing procedure such as shown in the "Hazardous Waste Guidelines" to test a representative sample of any waste for a corrosion rate greater than 0.250 inches per year of steel (SAE 1020) at a temperature of 130 degrees Fahrenheit.]

[(4) Radioactivty testing, using an apparatus and recognized procedure as shown in the "Hazardous Waste Guidelines" to test any waste not subject to the Federal Atomic Energy Act of 1954, for any radioactivity above the specified levels contained in 902 KAR 100:080 and 902 KAR 100:085.]

[(5) Irritation and sensitivity ratings, as published in "Dangerous Properties of Industrial Materials," by N. Irving Sax, Fourth Edition, filed herein by reference, or other recognized references, as listed in the "Hazardous Waste Guidelines."]

[(6) Pressure generation, incompatability, or reactivity determination or testing of a representative sample of the waste using published references, lists, or recognized tests such as shown in the "Hazardous Waste Guidelines."]

[(7) Extreme hazard determination or testing, using published references, lists, or recognized tests such as shown in the "Hazardous Waste Guidelines" from which an oral LD_{50} is found.]

Section 2. Hazardous Waste Lists. *The lists of hazardous waste are as described in 40 CFR 261, filed herein by reference.* [A waste that consists of or contains a material cited in the list of chemical names, the list of common names, or is generated by a process or source cited in the list of sources issued by the department in "Hazardous Waste Guidelines," list of hazardous wastes, waste sources, and processes, shall be considered a hazardous waste, and shall be handled and disposed of according to the requirements set forth in the hazardous waste regulations, unless it is shown to the satisfaction of the department that the waste does not meet the definition of hazardous waste presented in 401 KAR 2:050.]

Section 3. Hazardous Waste by Definition. A waste that meets the definition of hazardous waste presented in 401 KAR 2:050 shall be considered a hazardous waste whether or not the waste is cited in this regulation [or in "Hazardous Waste Guidelines"]. Such waste shall be handled and disposed of according to the requirements of the hazardous waste regulations.

JACKIE SWIGART, Secretary
ADOPTED: May 21, 1980
RECEIVED BY LRC: May 21, 1980 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
As Amended

401 KAR 2:080. Fees.

RELATES TO: KRS 224.033, 224.890
PURSUANT TO: KRS 13.082, 224.017, 224.033, 224.890
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: KRS 224.033(20) *states that the Department for Natural Resources and Environmental Protection may provide by regulations for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. The purpose of this regulation is to establish a fee schedule for hazardous waste permits.* [provides that the Department for Natural Resources and Environmental Protection may establish, by regulation, a schedule of fees for the cost of processing applications for permits and exemptions or partial exemptions. KRS 224.890 and the hazardous waste regulations require permits for the generation, treatment, storage, recycling, and disposal of hazardous waste.]

Section 1. *Applicability. This regulation relating to fees applies to all applicants, registrants, and permittees of hazardous waste, except publicly-owned facilities.* [Fee for Annual Registration and Registration Renewal. The fee for annual registration and registration renewal for the generation of hazardous waste shall be calculated by the formula $Y = AX^{0.25}$. In the formula, Y equals the annual fee in dollars, X equals the annual tonnage generated, and A equals 125 for hazardous waste; 250 for moderately hazardous waste; and 500 for extremely hazardous waste. The maximum fee for hazardous waste generation shall be $1,250; for moderately hazardous waste generation $2,500; and for extremely hazardous waste generation $5,000.]

Section 2. *Schedule of Fees for Application for Registration and Annual Registration Renewal. All applications for registration as a hazardous waste generator, recycler, or annual renewal of either, shall be accompanied by the appropriate fee set forth below:*

(1) The fee for registration or renewal as a hazardous waste generator, or recycler, shall be based on the quantity of hazardous waste generated or recycled according to the following schedule:

Quantity in Tons	*Registration Fee*
13.3 - 100	*$200*
101 - 300	*300*
301 - 500	*400*
501 or more	*500*

(2) Modification fee. If a registrant desires to increase by an additional hazardous waste the number of hazardous wastes he generates, or recycles, the fee for the processing of such modification shall be fifty dollars ($50) for a minor modification and $100 for a major modification. [Fees for Annual Permits and Permit Renewals. The fees for annual permits and permit renewals for the treatment, storage, recycling, and disposal of hazardous waste are as follows:]

[(1) For a disposal facility, the permit fee shall be $5,000.]

[(2) For the treatment or incineration of hazardous waste, the permit fee shall be $1,000.]

[(3) For the storage of hazardous waste, the permit fee shall be $500.]

[(4) For the recycling of hazardous waste, the permit fee shall be $250.]

Section 3. Computation of Annual Tonnage. For the purpose of this regulation, the annual tonnage of hazardous waste generated by a person will be based on the amount of hazardous waste generated by that person during the previous year in the form shipped for disposal or storage including water or other non-hazardous substance co-disposed. If the person did not generate any hazardous waste in the previous year, then the initial tonnage will be estimated by the department based upon reports furnished to the department by the person. On-site recycling or treatment processes by a generator may be considered to be a part of the generation process at the discretion of the department and annual tonnage may be assessed on the quantity of hazardous residue from such on-site recycling or treatment.

Section 4. *Schedule of Fees for Application for Permits and Annual Permit Renewal.* [Permits Required.] *(1) All applications for permits for the treatment, storage, and disposal of hazardous waste or annual renewals thereof, shall be accompanied by the appropriate fee set forth below:*

(a) For a disposal facility, the permit fee shall be $5,000.

(b) For the treatment, incineration, or storage of hazardous waste, the permit fee shall be $1,000.

(2) A separate hazardous waste permit is required for treatment, storage, recycling, or disposal of hazardous waste.

Section 5. Permit Modification Fee. If a permittee desires to increase, by an additional hazardous waste, the

number of hazardous wastes he treats, stores, recycles, or disposes, the fee for the processing of such permit modification shall be *$150* [$100].

Section 6. Exemption from Fees. *Publicly-owned facilities shall be exempt from the payment of fees as set forth in this regulation, but shall comply with the other applicable provisions of these regulations.* [The fees required under Sections 1, 2 and 5 shall not apply to an existing or proposed publicly-owned facility.]

JACKIE SWIGART, Secretary
ADOPTED: May 21, 1980
RECEIVED BY LRC: May 21, 1980 at 1:30 p.m.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
As Amended

702 KAR 4:060. Construction criteria.

RELATES TO: KRS 162.060, 162.160(1)
PURSUANT TO: KRS 13.082, 156.030, 156.070, 156.160(5)
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: To insure functional operation, comfort and economical operation of the proposed educational facility.

Section 1. The [structural] design for construction of *each* [all] new school building[s], building addition[s] and remodeling shall be in conformance with applicable building codes and regulations and approved by authorities having jurisdiction, *with special emphasis to energy code requirements. Compliance with the American National Standards Institute document A117.1 (specifications for making buildings and facilities accessable to, and usable by, physically handicapped) shall be required.* The following conditions shall be provided in the design of *each* [all] new school building[s]:

(1) The minimum width for elementary school main corridors shall be eight (8) feet in the clear.

(2) The minimum width for a middle school, junior high school, or high school main corridors shall be nine (9) feet in the clear.

[(3) A ramp up to one (1) to twelve (12) slope will be approved. All ramps shall have a non-slip surface. Changes in direction of ramps must have level landings.]

(3) [(4)] Corridors shall terminate at an approved egress or at a stairway which leads directly to an approved egress. A corridor extension of six (6) feet will be permitted. In no case shall more than two (2) *instructional areas* [classrooms] empty into *the* [this] corridor extension.

(4) [(5)] The minimum width of secondary corridors shall be six (6) feet.

(5) All roofs shall be sloped, and the required slopes shall be built into the structural system of the buildings; all roofing systems shall be unconditionally warranted for a period of two (2) years by the roofing manufacturers and by the applicators from the date of final inspection and acceptance of the project.

(6) *Walkways with a minimum width of twenty-two (22) inches shall be provided on the roof from the roof access point to and around each piece of major mechanical and electrical equipment.* [The roof shall have a minimum slope of one-half (½) inch per foot.]

Section 2. *Each exterior door must swing out. Exterior doors from each room housing more than forty-five (45) people shall have panic hardware. Each building housing people shall be provided with no fewer than two (2) exits.* [All exterior doors must swing out, and they shall be provided with panic hardware, except exit doors from individual classrooms not housing more than forty-five (45) people. No less than two (2) exits shall be provided for each building.]

(1) *Each* [All] exit door[s] shall be either recessed or protected by a canopy, except exit doors from individual *instructional areas* [classrooms] not housing more than forty-five (45) people. A landing of not less than four (4) feet shall be provided from the door threshold to the first step.

(2) *Each* [All exterior exit] door[s] and side light[s], when glazed, shall have either safety laminated glass, tempered glass panel[s], or approved equal[s].

(3) *Each* [Classroom] door[s] *to an instructional area* shall be at least three (3) feet by six (6) feet and eight (8) inches. *No other door shall be less than two (2) feet and eight (8) inches in width.*

(4) *Each* [Any] door swinging into a corridor shall swing through 180 degrees or be recessed *so it does not project into the minimum width of the corridor.*

(5) In *each* [any] room where there is a chance of panic by explosion such as a chemistry room, shop[s], etc., and in *each* [any] room that houses more than forty-five (45) *people* [students], *such as a* library, cafeteria, etc., *each* exit door[s] shall swing out.

[(6) Each building shall be so designed as to minimize architectural barriers to the handicapped and shall include specific provisions for ramps and doorways to accommodate wheelchairs.]

Section 3. No *fewer* [less] than two (2) stairways shall be provided in *a* multiple story building[s]. The stairways shall be remote from each other.

(1) *Each* [All] required stairway[s] shall be enclosed and have doors that *exit* [lead] to the outside without passing through a corridor.

(2) Width of main stairways shall not be less than forty-four (44) inches between handrails. *Each* [All] stairway[s] must be provided with a handrail on each side.

(3) Risers for main stairways shall not exceed seven (7) inches *in height*, and treads shall not be less than eleven (11) inches in width.

(4) No door shall open immediately upon a flight of stairs *or ramp.* A landing at least the width of the open door plus three (3) feet shall be provided.

(5) No storage space shall be located in or under any stairwell.

(6) *Each* exterior stairway[s] or ramp[s] used as *a* primary building exit[s] shall be covered and shielded from weather.

Section 4. *Each* standard elementary school *instructional area* [classrooms] shall *provide* [be as follows]:

(1) A minimum of 720 square feet of floor space.

(2) A minimum width of twenty-two (22) feet.

(3) A minimum of forty-eight (48) square feet of chalkboard.
(4) A minimum of forty-eight (48) square feet of tackboard.
(5) A storage space for children's clothing.
(6) A storage space for teaching materials and records.
(7) *A minimum* ceiling height [shall be a minimum] of eight (8) feet and eight (8) inches with mechanical ventilation *or* [and a minimum of] nine (9) feet and eight (8) inches with natural ventilation.

Section 5. *Each* standard[s] *instructional area* for middle school, junior high and high school [classrooms] shall *provide* [be as follows]:
(1) A minimum of 625 square feet of floor space.
(2) A minimum width of twenty-two (22) feet.
(3) A minimum of forty-eight (48) square feet of chalkboard.
(4) A minimum of forty-eight (48) square feet of tackboard.
(5) *A minimum* ceiling height [shall be a minimum] of eight (8) feet and eight (8) inches with mechanical ventilation *or* [and a minimum of] nine (9) feet and eight (8) inches with natural ventilation.

Section 6. A minimum window, twenty-four (24) by thirty (30) inches, shall be required in *each* [all] exterior *instructional area* [classrooms]. [Only interior rooms will be approved without a window.]
(1) *Each* [All] window[s] installed in *an* instructional area[s] shall have a minimum of fifty (50) percent of operable sash.
(2) *Each* [All] exterior window[s] shall [insofar as practical] be double glazed or insulated glass.
(3) Operable sections of windows shall be *no higher than sixty (60) inches* [within the reach of the classroom teacher].
(4) *No* clerestory window[s] *or* [and] skylight[s] shall [not] be approved in *an instructional* [classroom] area[s].
(5) The height of a window sash or frame shall be a minimum of thirty (30) inches above the finished floor.
(6) In *an instructional area* [classrooms] approved without mechanical ventilation, the area of *operable* window [ventilation] shall be equal to ten (10) percent of the floor area.

Section 7. Toilet rooms, shower rooms and locker rooms in a school building shall be exhausted [by means of an exhaust duct system]. Exhaust registers shall be located at or in the ceiling of each area and exhausted directly to the outside. Exhaust ducts serving rooms for opposite sexes shall not be connected to a common exhaust duct unless adequate sound proofing is provided. There shall be a minimum of twenty (20) air changes per hour of air provided for *each* [all] area[s].

Section 8. *Energy conservation requirements shall be:*
(1) *Each* [All] exterior wall[s] shall have a maximum composite U-factor of .20 BTUH per square foot per degree Fahrenheit.
(2) A maximum composite U-factor for roofs shall be .10 BTUH per square foot per degree Fahrenheit.

Section 9. Standards for auxiliary spaces shall be as follows: (1) Auditoriums, gymnasiums, and multipurpose rooms shall be located on the ground level and regardless of size shall be provided with at least two (2) exits remote from each other.
(2) Noise producing areas shall be located remote and shielded from *instructional* [classroom] areas.
(3) A principal's office, secretaries' space and reception area shall be provided in *each* [all] school *plant* [buildings].
(4) Records storage room shall be provided in *each* [all secondary] school[s]. This shall be a fireproof room with a two (2) hour rating.
(5) Locker space, properly ventilated, shall be provided for each middle, junior high, and high school student.
(6) A guidance area shall be provided in *each* [all] school plant[s].
(7) A first aid room with toilet shall be provided in *every* [all] school *plant* [buildings].
(8) A general storage area for equipment and material storage shall be provided in *every* [all] school *building* [plants].
(9) *A* custodial [storage and] equipment *storage* room[s] shall be provided in *every* [all] school building[s] , *with custodial closets provided in each major area.*
(10) Ceiling heights of *each* [all] special instructional area[s] shall be eight (8) feet and eight (8) inches or more relative to the area of the room. The corridor height shall be a minimum of eight (8) feet in the clear.

Section 10. Old buildings remodeled for instructional purposes shall insofar as practical, meet the requirements of new spaces that would be used for the same purposes. The plans and specifications shall be approved by the Superintendent of Public Instruction prior to the advertisement for bids for the project.

Section 11. The Superintendent of Public Instruction is authorized to waive any of the foregoing requirements upon the request of the local board for good cause, provided that it is further shown in writing that such a waiver does not constitute a voilation of any other agency having jurisdiction.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 20, 1980
RECEIVED BY LRC: June 4, 1980 at 10 a.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
As Amended

904 KAR 2:005. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3)
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: The Department for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, hereinafter referred to as AFDC, in accordance with title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, depriva-

tion, living with a relative, age, one (1) category of assistance, [and] work registration, *cooperation in child support activities and potential entitlement for other programs* for eligibility for AFDC.

Section 1. Residence *and Citizenship. Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a resident is anyone who is living in the state, entered the state with a job commitment or seeking employment, and is not receiving AFDC benefits from another state. Citizenship is determined in accordance with 45 CFR 233.50 which states that AFDC can be provided only to citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.* [To be eligible for AFDC, a child shall be domiciled in Kentucky.]

Section 2. Deprivation. (1) To be eligible for AFDC, a child must be in need and must be deprived of parental support or care due to the death, continued absence from the home or physical or mental incapacity *of a natural or adoptive parent. A married child living with her/his spouse in the home of her/his parents is not deprived of parental support or care. A married child living in the home of her/his parents but divorced or legally separated from her/his spouse is deprived of parental support if she/he is dependent on the parent and a parent is dead, incapacitated or continually absent from the home.*

(2) Continued absence from the home. To be eligible for AFDC, a needy child must be physically separated from the parent and the nature of the absence of the parent is such as either to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child. Absence may be voluntary or involuntary. Voluntary absence includes divorce, legal separation, marriage annulment, desertion of thirty (30) days or more, or birth out-of-wedlock. Involuntary absence includes commitment to a penal institution for thirty (30) days or more, long term hospitalization, military service or deportation. *A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.*

(3) Incapacity defined. Incapacity is any condition of mind or body which makes a parent physically or mentally unable to provide the necessities of life for his needy child. The condition must be anticipated to continue for at least thirty (30) days beyond the date of application and may be presumed to continue during a period in which the parent is undergoing diagnostic studies and/or evaluation of rehabilitation potential.

(a) Incapacity of the *parent* [father] must prevent him*/her* from working in an occupation in which he*/she* previously engaged, or another job for which he*/she* is equipped and which is accessible in the county or community where he*/she* normally resides. If a job opportunity exists in the community or county, it shall be considered accessible regardless of its immediate availability. Scarcity of work does not establish incapacity unless there is a *causal* [casual] relationship between the *parent's* [father's] unemployment and actual physical or mental disability.

(b) Incapacity of the mother must prevent her from engaging in a useful occupation including performance of homemaking and child care functions.

Section 3. Living with a Specified Relative. To be eligible for AFDC a needy child must be living in the home of a relative as specified in the Social Security Act and interpreted as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(4) *Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.* [An exception to the requirement of living in the home of a relative specified above is made in the case of a child placed in foster care following a judicial determination that remaining in the home of the relative would be hazardous to his welfare, providing the child was receiving AFDC as of the month in which court action was initiated, or if not, would have received AFDC if application had been made; or if not living with a relative at the time of court action, did live with such relative within six (6) months prior to the month of initiation of court action and was eligible or would have been eligible for AFDC if application has been made.]

(5) A child is considered as living in the home even when temporarily absent for medical care, attendance at boarding school, college or vocational school, emergency foster care or short visits with friends or relatives, if the parent continues to exercise control over the child.

(6) A child placed in foster care is not required to be living in the home of a relative to be eligible to receive AFDC-FC in his foster home.

Section 4. Age and School Attendance. A child may be eligible for AFDC from birth to age twenty-one (21); provided, however, that the child eighteen (18) to twenty-one (21) is regularly attending a school or training course leading to a certificate, diploma or degree *as required by* [in accordance with] 45 CFR Section 233.10 and further provided that the eighteen (18) to twenty-one (21) year old attending school less than full-time is either regularly employed or available for and seeking employment unless precluded therefrom by a physical handicap. *Full- and part-time is defined in accordance with 45 CFR 233.90. A child is considered in regular attendance in months in which he is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he has indicated an intention not to re-enter school.*

Section 5. One Category of Assistance. A child or adult relative shall not be eligible for AFDC if receiving supplemental security income.

Section 6. Work Registration. (1) Unless exempt under the criteria, as specified in Title VI of the Social Security Act and 45 CFR Section *224.20(b)* [233.11] needs of an individual for whom application has been made may not be included in the AFDC assistance grant if he refuses to register for the Work Incentive Program, (WIN) or if registered, refuses to participate without good cause.

(2) Individuals exempt from WIN registration *pursuant to 45 CFR 224.20(b)* are as follows:

(a) A child under age sixteen (16).

(b) A child age sixteen (16) to twenty-one (21) if enrolled as a full-time student.
(c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days.
(d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days.
(e) An individual age sixty-five (65) or over.
(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined to be precluded from self-care and for whom alternate care arrangements are not feasible.
(g) A mother or other caretaker relative of a child under six (6).
(h) A person so far remote from a work incentive project that his effective participation is precluded.

Section 7. Cooperation in Child Support Activities. (1) Inclusion of the specified relative in the AFDC budget is dependent upon cooperation in child support activities pursuant to 45 CFR 232.40 [12] and refusal, except for "good cause," results in removal of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.
(2) If, after exclusion from the grant for failure to cooperate, the individual states that he/she is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.
(3) Pursuant to 45 CFR part 232.13, the Department for Human Resources will provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.
(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:
(a) The applicant or recipient's cooperation is reasonably anticapted to result in physical or emotional harm of a serious nature to the child; or
(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself/herself to such an extent that it would reduce his/her capacity to care for the child(ren) adequately; or
(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicants's/recipient's cooperation; or
(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or
(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him/her for adoption and discussion has not gone on for more than three (3) months and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation.
(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

Section 8. Potential Entitlement for Other Programs. All applicants/recipients must apply for any statutory benefit(s) if potential entitlement exists. Failure to apply results in ineligibility for AFDC.

Section 9. Furnishing of Social Security Account Numbers. All applicants/recipients must furnish social security account numbers pursuant to 45 CFR 232.10.

Section 10. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Department for Human Resources of any child support owed for the child up to the amount of AFDC payments made to the recipient.

Section 11. Eligibility Criteria for Foster Care. To be eligible for foster care, the child must meet the technical requirements of the regular AFDC program as set forth in this regulation. In addition, the child must have been:
(1) Removed from the home after April 30, 1961; and
(2) Committed to the department by a judicial determination under the authority of KRS 208.200 or 208.080 specifying that the child is delinquent, neglected, needy, or dependent (as stated in KRS 208.020), or if prior to June 1976, KRS 205.430, that continuance in or return to the home of a relative would be contrary to his/her welfare; and
(3) Receiving AFDC as of the month in which court action was initiated, or if not, would have received AFDC if application had been made; or if not living with a relative at the time of court action, did live with such relative within six (6) months prior to the month of initiation of court action and was eligible or would have been eligible for AFDC if application had been made.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: May 9, 1980
APPROVED: W. GRADY STUMBO
RECEIVED BY LRC: May 14, 1980 at 9:30 a.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
As Amended

904 KAR 2:010. AFDC; standards for need and amount.

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS 13.082, 205.200(2)
EFFECTIVE: June 4, 1980
NECESSITY AND FUNCTION: The Department for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Resource Limitations: An applicant for or recipient of AFDC is permitted to retain:

(1) A homestead, household equipment, motor vehicles and farm equipment without limitation on value;
(2) Equity in non-homestead, income producing property, not to exceed $5,000;
(3) Equity in non-income producing non-homestead property not to exceed $1,000;
(4) Other assets are limited to:
(a) Savings, stocks or bonds: $500 for child living with relative other than parent; $1,000 for one (1) child and one (1) parent; $1,500 for two (2) or more children and one (1) or two (2) parents or one (1) child and two (2) parents.
(b) Cash surrender value of life insurance not to exceed $1,000 for each parent or $500 for each child.
(5) Non-continuing income which, whenever added to other resources, does not exceed resource maximums.

Section 2. Countable Income: *To determine if a specified relative may be included in the AFDC grant when a stepparent is also in the home, a test budget is completed. Gross income of the stepparent and any of his/her minor children in the home is adjusted by deducting work expenses, child care and fixed and measurable medical expenses. The adjusted income is compared to the income allowed for that family size (the stepparent and his/her children) in accordance with the medical assistance income scale contained in 904 KAR 1:004. Any excess is then applied to the needs of the specified relative. If the specified relative's needs are met, the specified relative may not be included in the AFDC grant and none of the stepparent's income is included in the budget unless it is actually made available to the children included in the grant. If the specified relative's needs are not met, the specified relative may be included in the AFDC grant and the excess income of the stepparent is counted in the grant determination.* In determining *initial* eligibility for AFDC and the amount of the assistance payment, all continuing income of persons for whom application is made or assistance received is deducted from the assistance standard except those amounts or from those sources for which a disregard is required by 45 CFR 233.20 as follows:
(1) *Standard work expense deductions in accordance with the following scale or verified actual work expenses if verification is provided by the client. This scale covers all work expenses except child care.* [First thirty dollars ($30) and one-third (⅓) of the remainder of the total combined earned income of all the members of the assistance group, but only following determination of initial eligibility without consideration of this disregard.]

Work Expense Standard Deduction Scale
(Excluded Work-Related Child Care)

Gross Monthly Earned Income	*Standard Monthly Deduction*
$ 2.00- 49.99	*$ 6.00*
50.00- 99.99	*19.00*
100.00-149.99	*31.00*
150.00-199.99	*44.00*
200.00-249.99	*56.00*
250.00-299.99	*69.00*
300.00-349.99	*81.00*
350.00-399.99	*94.00*
400.00-449.99	*106.00*
450.00-499.99	*119.00*
500.00-549.99	*131.00*
550.00-599.99	*144.00*
600.00-649.99	*156.00*
650.00-699.99	*169.00*
700.00-749.99	*181.00*
750.00-799.99	*194.00*

(2) *Earnings of a child under age fourteen (14).* [Actual work expenses.]
(3) *Work Incentive Program (WIN) and Comprehensive Employment and Training Act Program (CETA) incentive payments.* [Earnings of a child under age fourteen (14).]
(4) *Reimbursement for training-related expenses made by a manpower agency to applicants in institutional and work experience training.* [Earnings of a child in full-time school attendance or in half-time school attendance, if not working full-time.]
(5) *Value of food coupons.* [Work Incentive Program (WIN) and Comprehensive Employment and Training Act Program (CETA) incentive payments.]
(6) *Emergency assistance program payments pursuant to 904 KAR 2:008.* [Reimbursement for training-related expenses made by a manpower agency to clients in institutional and work experience training.]
(7) *Non-emergency medical transportation payments.* [Bonus value of food coupons.]
(8) *Principal of loans obtained to meet needs not included in the assistance plan, e.g., home repair, farm expansion.* [Emergency assistance payments.]
(9) *Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans administered by the United States Commissioner of Education.* [Non-Emergency medical transportation payments.]
(10) *The amount of statutory benefits, paid to or for a minor child and with the condition that the child be in regular school attendance, which is used for tuition, registration fees, and other school-related expenses.* [Principal of loans obtained to meet needs not included in the assistance plan, e.g., home repair, farm expansion.]
(11) *Highway relocation assistance.* [Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans administered by the United States Commissioner of Education.]
(12) *Urban renewal assistance.* [The amount of statutory benefits, paid to or for a minor child and with the condition that the child be in regular school attendance, which is

used for tuition, registration fees, and other school-related expenses.]

(13) *Federal disaster assistance and state disaster grants.* [Highway relocation assistance.]

(14) *Home produce for household consumption.* [Urban renewal assistance.]

(15) *Proceeds from the sale of homestead property provided the family intends to reinvest in another homestead within six (6) months.* [Federal disaster assistance and state disaster grants.]

(16) *Income/resources of a step-parent are considered only in relation to the eligibility of the parent as specified relative.* [Home produce for household consumption.]

(17) Earnings received by a person employed by CETA under the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conversation and Improvement Project (YCCIP), and the Youth Employment and Training Program (YETP).

(18) Earnings received from participation in Job Corps.

(19) Experimental housing allowance program payment made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended; and HUD Section 8 payments for existing housing under Title 24 part 882.

(20) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975.

(21) Compensation provided to volunteers under Vista/Action or other programs established under Title VI of the Older American's Act of 1965, as amended.

(22) Earned income credit provided under the Revenue Act of 1978.

(23) First thirty dollars ($30) and one-third (⅓) of the remainder of the total combined earned income of all the members of the assistance group if the family's needs were met in whole or in part by an AFDC payment for any one (1) of the four (4) months preceding month of application.

Section 3. *Additional disregards: After initial eligibility is established, the following income is also disregarded:* [Assistance Standard: The AFDC assistance standard including amounts for food, clothing, shelter, utilities and non-medical transportation from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment is as follows:]

[Number of Eligible Persons	Monthly Standard
1 Child	$ 75
2 Persons	$135
3 Persons	$185
4 Persons	$235
5 Persons	$275
6 Persons	$310
7 or more Persons	$345]

[The actual cost of child care may be added to the standard if the relative with whom the child lives is in a training program for which no wage or allowance is received.]

(1) First thirty dollars ($30) and one-third (⅓) of the remainder of the total combined earned income of all the members of the assistance group.

(2) Earnings of a child in full-time school attendance or in half-time school attendance, if working full-time.

Section 4. Members of Assistance Group: (1) The assistance group is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:005, Section 3. The incapacitated natural or adoptive parent of the child(ren) who is living in the home and legally married to the specified relative may be included as second parent if the technical eligibility factors are met.

(2) The decision regarding application for or continued inclusion of an individual child rests with the parent or other specified relative.

Section 5. Assistance Standard. The AFDC assistance standard including amounts for food, clothing, shelter, utilities and non-medical transportation from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment is as follows:

Number of Eligible Persons	*Monthly Standard*
1 Child	*$ 75*
2 Persons	*$135*
3 Persons	*$185*
4 Persons	*$235*
5 Persons	*$275*
6 Persons	*$310*
7 or more Persons	*$345*

(1) The actual cost of child care shall be added to the standard if the relative with whom the child lives requests a child care payment and is in a training program for which no wage or allowance is received.

(2) A special requirement shall be added to the standard of assistance for child care or to include special needs related to participation in the Community Work Experience Program (CWEP) under the following conditions:

(a) The specified relative, included in the grant is pursuing a course of training and the children require purchased care during the absence of the relative.

(b) The payee, other than the parent, is not included in the budget but must pay child care in order to retain employment.

(c) A specified relative or child is participating in CWEP.

Section 6. Payment Rates for Foster Care. Payment rates are based on the Department for Human Resources per diem payment rates. The department's rates are based on the age and needs of the child.

(1) A child in foster family care who is eligible for aid to families with dependent children foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment (as determined by the Bureau for Social Services):

Age	*Regular*	*Special*	*Extraordinary*
0-5	*$144*	*$167*	*$228*
6-12	*160*	*183*	*228*
13-over	*175*	*198*	*228*

(2) A child in a private child caring institution who is eligible for aid to families with dependent children foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment as (determined by the Bureau for Social Services):

Age	*Regular*	*Special*
0-5	*$151*	*$212*
6-12	*175*	*212*
13-over	*192*	*212*

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: May 9, 1980
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: May 14, 1980 at 9:30 a.m.

Proposed Amendments

Kentucky Higher Education Assistance Authority (Proposed Amendment)

11 KAR 4:030. Student appeals process.

RELATES TO: KRS 164.748(14)
PURSUANT TO: KRS 13.082, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers programs to provide financial assistance to students to attend post-secondary institutions. This regulation sets forth the procedures by which students may request a review of decisions made by the authority which affect their eligibility to participate in authority administered programs.

Section 1. Written Inquiry. A student may, upon any adverse action by the authority, submit a written request to the authority *within sixty (60) days* (or any delegated officer of the authority) at Frankfort, Kentucky, for a concise statement of the reason(s) for such action. The authority or any of its delegated officers, within ten (10) working days of said notice, shall *respond in writing* [initiate a written response] to the student inquiry and notify the student therein of the right to appeal. In the event the student disputes the factual *accuracy of information contained in the authority's response, the student may submit certified documentation and such other information as the authority may require, and request a redetermination.* [basis on which the decision was made,] *In the event that the student disputes the application of rules and/or regulations and/or discretionary determinations by the authority to particular facts,* the student may request a review of the decision by the executive director. If the findings warrant, the executive director may uphold the findings of the officer or may find in favor of the student. *Said review shall be requested within sixty (60) days of notification of the reason(s) for any adverse action. Prior to a determination by the executive director, the student shall submit any and all documentation and information as the student reasonably believes supports his/her position, and shall submit such information and documentation as the authority may reasonably require. Said documentation and information shall be deemed conclusive evidence as to all matters in dispute, and shall be binding against all parties.*

Section 2. Notices. The student shall be provided with notice of the decision which shall be issued in the name of the executive director and shall inform the student of the right to appeal to the authority for a hearing on all issues contained therein. All requests for hearings may be effected in the same manner as prescribed by law for the service of civil process or by the student forwarding same to the authority by U. S. registered mail or certified mail, postage prepaid, to the authority at Frankfort, Kentucky. At such a hearing the student will be entitled to be represented by counsel chosen by the student at student expense. The hearing may be conducted by a hearing officer or a hearing committee appointed by the authority. All members of the authority and all persons appointed by the authority as hearing officer or members of a hearing committee are authorized to administer oaths, issue subpoenas for attendance of witnesses and for the production of related records and documentation, and to cite for contempt before the court having jurisdiction in the county in which the hearing is held for disobedience of its process or for improper conduct. The student, or student counsel or both will be entitled to introduce testimony by witnesses or, if the authority so permits, by deposition(s). Hearing officers and hearing committees will prepare recommendations and submit same to a committee of the board.

Section 3. Decisions and Appeals. In the absence of an appeal to the board, decisions made as a result of the authority hearing shall be binding upon the authority and the student, twenty (20) days after written notice thereof is given as provided.

PAUL P. BORDEN, Executive Director
ADOPTED: May 15, 1980
RECEIVED BY LRC: May 27, 1980 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

Kentucky Higher Education Assistance Authority (Proposed Amendment)

11 KAR 5:035. Application by recipients of AFDC.

RELATES TO: KRS *164.748(4), (8), (14), (16); 164.753(4)(b),* [164.740 to 164.764,] 164.780, 164.785
PURSUANT TO: KRS 13.082, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth procedures by which recipients of Aid To Families With Dependent Children payments may apply for KHEAA grant assistance and the award determination procedures for such applicants.

Section 1. The student application prescribed in 11 KAR 5:050 shall be used.

Section 2. To properly complete the KHEAA grant application procedure, each *applicant who receives payments for himself/herself or whose parents receive payments on behalf of the applicant* [parent or child whose parents receive payments] under the program known as "Aid To Families With Dependent Children (AFDC)" administered by the Kentucky Department for Human Resources, Bureau for Social Insurance (DHR, BSI), must indicate in the designated place on the application that *these benefits are received* [the family received these benefits].

Section 3. KHEAA will request data from the DHR, BSI to verify that the family is a current bona fide recipient of payments under the AFDC program.

Section 4. Each verified applicant *receiving AFDC payments for himself/herself or whose parents receive payments for the applicant* who meets all of the student eligibility requirements in 11 KAR 5:030, except Section 1(4), will be awarded a KHEAA grant in the maximum amount available to students at the educational institution where the *applicant* [student] is or will be enrolled for the period covered by the application, so long as funds are available.

PAUL P. BORDEN, Executive Director
ADOPTED: May 15, 1980
RECEIVED BY LRC: May 27, 1980 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

Kentucky Higher Education Assistance Authority (Proposed Amendment)

11 KAR 5:090. Refund *and repayment* policy.

RELATES TO: KRS *164.748(4), (8), (12), (14); 164.753(4)(a),* [164.740 to 164.764] 164.780, 164.785
PURSUANT TO: KRS 13.082, 164.748*(4)*[(3)]
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky postsecondary institutions. This regulation sets forth the *apportionment of financial aid refunds from institutions and repayment from students due to the* [refund policy for] KHEAA grant programs. *It is necessary to amend this regulation for the purpose of consistency with applicable federal regulations promulgated at 45 CFR 168.21.*

Section 1. *A student who fails to enroll, withdraws or changes enrollment status may be due a refund of monies paid to the institution or may owe a repayment of cash disbursements made to the student for educationally related expenses. If the student received financial aid, a portion of the refund and/or repayment is due to the financial aid programs.* [No refund of KHEAA grant funds shall be due to the authority or a student recipient after six (6) weeks from the first day of classes in the enrollment period for which the grant is awarded.]

Section 2. *The amount of the refund and/or repayment shall be determined in accordance with the institution's refund and/or repayment policies relative to financial aid funds, except as provided in Section 3. These policies must be published and consistently administered. Such policies must be on file with the authority. The authority must be notified in writing of any changes in such policies.* [When a KHEAA grant recipient withdraws before six (6) weeks after the first day of classes in the enrollment period for which the grant is awarded, the amount to be refunded to the authority shall be in the same ratio to the amount of total refund as the amount of KHEAA grant funds already disbursed to the student at the time he withdraws from the institution bears to the KGPO's calculation of student budget for the period of enrollment for which the refund is due.]

Section 3. *When a KHEAA grant recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund or repayment of the KHEAA grant shall be required, notwithstanding any institutional policy to the contrary. In cases of unofficial withdrawal, the institution shall use the last recorded date of class attendance by the student as the end of the student's enrollment. If the institution is unable to document the student's last date of attendance, any KHEAA grant disbursement for that award period shall be subject to full refund and/or repayment.* [The formula for computing KHEAA refund shall be: amount of KHEAA refund equals disbursed KHEAA grant amount divided by KGPO's calculation of student budget times the amount of total refund.]

Section 4. If a refund is due under the institution's financial aid refund policy, the KHEAA grant or a portion thereof shall be refunded by the institution by check made payable to KHEAA grants. The institution shall multiply the total financial aid refund amount by the following fraction to determine the portion of the refund to be returned to the authority:

$$\frac{\textit{KHEAA state grant for the term}}{\textit{Total aid awarded for the term (minus work earnings)}}$$

Section 5. (1) If, under the institution's financial aid repayment policy, the student owes a repayment, the KHEAA grant or a portion thereof must be repaid to the authority by the student. The institution must calculate the

amount of repayment due to the authority and notify the student and the authority in a timely fashion regarding the amount due to the authority. Students are required to make such repayments by certified check or money order payable to KHEAA Grants, Frankfort, Kentucky 40601. The institution shall multiply the total financial aid repayment amount by the following fraction to determine the portion of the repayment to be paid to the authority by the student:

$$\frac{\textit{KHEAA state grant for the term}}{\textit{Total aid awarded for the term (minus work earnings)}}$$

(2) The authority shall notify the student and the institution when such are received.

Section 6. Refunds by institutions and notifications of student repayments due transmitted to the authority shall be accompanied by student's name and social security number, the reason for the refund and/or repayment, date of enrollment status change, the semester and year, and the calculation used for determining each refund and/or repayment.

PAUL P. BORDEN, Executive Director
ADOPTED: May 15, 1980
RECEIVED BY LRC: May 27, 1980 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

Kentucky Teachers' Retirement System (Proposed Amendment)

102 KAR 1:035. Substitute teaching by retired teachers.

RELATES TO: KRS 161.605
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.605 provides that retired teachers may do part-time or substitute teaching not to exceed the equivalent of *100* [75] days per year. This regulation provides the procedures and definitions necessary to administer this statute.

Section 1. Teachers retired for service may do substitute or regular part-time teaching for not more than *100* [seventy-five (75)] days in each fiscal year. They shall pay no contributions and shall have no reductions in their regular annuities on account of such service. Retired teachers shall do no other teaching in the public schools or state supported universities covered by the retirement system.

Section 2. For purposes of this regulation and KRS 161.605, any period of substitute teaching of three (3) hours or less shall be considered one-half (½) day and any period greater than three (3) hours shall be considered a full day. Part-time employment shall not exceed *fifty-four (54)* [forty (40)] percent of a full-time teacher's weekly schedule on a regular school term (nine and one-fourth (9¼) months) basis, and no more than *thirty-nine (39)* [thirty (30)] percent of a full-time employee's weekly schedule on a twelve (12) month basis.

PAT N. MILLER, Executive Secretary
ADOPTED: May 5, 1980
RECEIVED BY LRC: May 20, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Pat N. Miller, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

Kentucky Teachers' Retirement System (Proposed Amendment)

102 KAR 1:070. Application for retirement.

RELATES TO: KRS 161.600, 161.640
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.600 and 161.640 provide that members who are eligible for retirement may apply for an annuity and receive benefit payments. This regulation sets out procedures for filing of retirement applications and for determining effective dates of annuity payments.

Section 1. Applications for retirement shall be filed on forms furnished by the Teachers' Retirement System.

Section 2. Applications for retirement for service to be effective at the beginning of the next fiscal year shall be filed on or before June 1. A member eligible to retire may exercise this right during a school year in which he has been in employment provided there is filed with the application a notarized statement from the chief administrative officer of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement. Applications filed during the school year shall be effective as of the first of the month following the date the application is received in the Teachers' Retirement System office.

Section 3. An application received by mail and bearing the U. S. Postal Service postmark dated on or before the filing date set out in Section 2 shall be accepted as having been filed in compliance with that section.

Section 4. Applications for service retirement may be approved by the Board of Trustees with an effective date that is retroactive up to a maximum of three (3) months if the member was not under contract for the period. This provision shall apply to retirements that became effective on or after July 1, 1975.

PAT N. MILLER, Executive Secretary
ADOPTED: May 5, 1980
RECEIVED BY LRC: May 20, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Pat N. Miller, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:110. Leave of absence.

RELATES TO: KRS 161.545
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.545 provides that members of the Teachers' Retirement System may make contributions and receive service credit while on a leave of absence as set out in regulations of the Board of Trustees. This regulation provides procedures for receiving such contributions and granting of service credit for members on leave of absence.

Section 1. Members may make contributions while on leave of absence granted by the governing board of a school district or institution in accordance with the provisions of the statutes at the time the leave is granted. Payment of contributions shall be made by the end of the fiscal year next succeeding the year in which the leave was effective. No member may make payment on leave of absence for more than three (3) years in any ten (10) year period beginning with the first year of such leave. The administrative head of the district or institution granting the leave shall certify the granting or extension of leave to the Teachers' Retirement System. No leave for a period longer than one (1) year shall be recognized, but such leaves may be extended annually for a total not to exceed three (3) years.

Section 2. Contributions for a period of leave shall be based on the annual salary for the last year of active service at the contribution rate in effect for the period of leave. Interest at the rate of six (6) percent per annum shall be added for contributions paid after the end of the school year for which the leave was granted [except that contributions made on the basis of KRS 161.545(2) shall have interest added at the rate of three (3) percent compounded annually from the end of the school year for which the leave was granted to date of payment].

Section 3. A leave of absence shall not be recognized by the Teachers' Retirement System as a basis for making contributions to the system unless the member was employed in a covered position as defined in KRS 161.220(22), by the employer granting the leave and received compensation for at least one-half (½) a regular school year during the year the leave was granted or during the next preceding school year.

PAT N. MILLER, Executive Secretary
ADOPTED: May 5, 1980
RECEIVED BY LRC: May 20, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Pat N. Miller, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:155. Annuity payments.

RELATES TO: KRS 161.640
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.640 sets out the manner of approving and paying annuities. This regulation provides further guidelines for carrying out the provisions of this statute.

Section 1. [No annuity shall be retroactive.] After an annuity or retirement allowance is authorized by the board, the secretary shall, without further authorization cause the annuity or allowance checks to be issued regularly during the life*time* of the annuitant, or in accordance with the terms of the option chosen by the member.

Section 2. The last check shall be issued for the pro rata amount from the first day of the pay period to and including the day of death.

PAT N. MILLER, Executive Secretary
ADOPTED: May 5, 1980
RECEIVED BY LRC: May 20, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Pat N. Miller, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Real Estate Commission
(Proposed Amendment)

201 KAR 11:037. List of licensees; fee.

RELATES TO: KRS 324.290
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public. *It is not feasible to reproduce such a list for a minor charge.*

Section 1. All persons desiring a list of the names and addresses of real estate licensees as prescribed by KRS 324.290 *may* [shall be able to] obtain a copy of same at the commission office *at actual charge for reproduction.* [free of charge, or if requested by mail, a fee of one dollar ($1) will be charged.]

JOHN A. CELLETTI, Chairman
ADOPTED: June 6, 1980
RECEIVED BY LRC: June 10, 1980 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: General Counselor, Kentucky Real Estate Commission, 100 East Liberty Street, Suite 204, Louisville, Kentucky 40202.

CABINET FOR DEVELOPMENT
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:035. Cumberland Gap National Historical Park.

RELATES TO: KRS 150.025, 150.250, 157.170, 150.175, 150.470
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation is a cooperative effort by the state and national parks to permit use of a limited and specialized resource. *This amendment is necessary to adjust the size limit on a smaller strain of brook trout in Shillalah Creek.*

Section 1. The following rules shall apply to those portions of Shillalah Creek and Martins Fork Creek lying wholly within the Cumberland Gap National Historical Park.

(1) Fishing is permitted from sunrise to sunset only.

(2) During any period of emergency or to prevent overuse by fishermen of waters open to fishing in Cumberland Gap National Historical Park, the Superintendent, in his discretion may close to fishing all or any portion of such open waters for such periods of time that may be necessary: Provided, the notice be given by the posting of appropriate signs, notices and markers.

(3) The waters of Shillalah Creek and Martins Fork Creek, inclusive of its tributaries are designated as "sport fishing streams" only.

(4) Fishing is permitted from May 15 through September 15 inclusive.

(5) No trout less than twelve (12) inches in length may be retained *from Martins Fork Creek and no trout less than ten (10) inches in length may be retained from Shillalah Creek.* All undersized fish shall be immediately and carefully returned to water.

(6) The limit of catch per day or possession by each person shall not exceed two (2) trout. Immediately upon retention of the limit of trout the fisherman must disassemble his fishing tackle and cease fishing.

(7) Fishing is permitted only with artificial flies or lures with a single hook. Possession of fish eggs, small fish, insects, worms and other similar organic bait or parts thereof while in the possession of fishing tackle is prohibited.

(8) The National Park Service makes no charge for fishing, but persons fishing within the park in these waters must procure a resident or nonresident state license and trout stamp as issued and required by the State of Kentucky.

Section 2. That portion of the Little Yellow Creek and its tributaries lying within the boundaries of Cumberland Gap National Historical Park are reserved, posted and open to fishing year round, exclusively for children fourteen (14) years of age and under. State size limits will be adhered to.

(1) The limit of catch per day or possession by each child shall be four (4) fish. Immediately upon retention of the limit of fish, each child must disassemble his fishing tackle and cease fishing.

(2) Bait is permitted, however, the use of dead fish and fish eggs or the digging for bait on park lands are prohibited.

CARL E. KAYS, Commissioner
MIKE BOATWRIGHT, Chairman
ADOPTED: June 2, 1980
APPROVED: JAMES NAVOLIO, Deputy Secretary
RECEIVED BY LRC: June 9, 1980 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

CABINET FOR DEVELOPMENT
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:140. Special commercial fishing permit.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.190, 150.450
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: Gill and trammel nets are the most effective gear for the taking of certain rough fishes, but they pose a danger of overharvest of the most desirable rough species and are a threat to certain sport fish if not properly regulated; therefore, the Commissioner with the concurrence of the Commission finds a need to authorize additional use of such gear experimentally through the issuance of a permit which will have strict termination provisions and other safequards to control their use. *This amendment is necessary to include additional refinements based on a period of experimentation.*

Section 1. Issuance of Special Permit. The commissioner, after giving due consideration to the composition of the commercial fish population, the vulnerability of the game fish involved, and the ability and reliability of the applicant may issue a special commercial fishing permit to use gill and trammel nets in specified waters, other than those designated in 301 KAR 1:145, Section 2(4)(b).

Section 2. Application for Permits and Revocation. An applicant for a special permit to use gill and trammel nets shall file an application to which he signs his name attesting that he has read and will abide by all of the provisions of the permit and will obey all applicable game and fish laws and regualtions or have his permit revoked without refund if found in violation by the commissioner. The offending permittee and assistant shall be ineligible to apply together or separately for another permit for a period of one (1) year following revocation.

Section 3. General Provisions of the Special Permit to use Gill and Trammel Nets. (1) The applicant for a permit must possess a valid commercial fishing license.

(2) The permit fee shall be $500.

(3) Mesh size:

(a) Gill and trammel nets set and left must have a bar mesh size no smaller than three and one half (3½) inches *and no larger than four and one-half (4½) inch bar mesh size.*

(b) Gill and trammel nets used as whip sets may have a minimum bar mesh size of three (3) inches, *and no larger than four and one-half (4½) inch bar mesh size,* but must be constantly attended by the permittee and/or assistant.

(4) Waters open to special permit fishing:

(a) Commercial fishing waters of Rough River Lake.

(b) Commercial fishing waters of Barkley Lake.

(c) Commercial fishing waters of Kentucky Lake.

(5) The permit shall be valid for five (5) months only, November 1 through March 31.

(6) The permittee shall have no more than one (1) assistant who is a licensed commercial fisherman listed on the permit. Assistant may be replaced at any time, after the conservation officer or officers in the counties fished are notified, and a written notice given to the commissioner. The name of a new assistant must be listed on the permit and all copies, and his predecessor's name marked out with ink.

(7) The permittee or assistant must have the permit or copy of the permit in possession at all times gear is being transported, set, raised, or run. Their names shall be on the permit or copy, and each must contain the same names.

(8) Illegal acts by permittee or assistant acting together or separately may result in permit revocation.

(9) The permittee shall keep daily catch and sales reports and submit weekly to the commissioner. No subsequent permit shall be issued until all reports required by the preceding permit are received by the commissioner. The reports shall include:

(a) The number of each species caught by common name.

(b) Disposition of each fish.

(c) Duplicate sales receipts of all fish sold.

(d) The average total length of nets fished daily listing gill and trammel nets separately and whip sets separately.

(e) Daily catch and sales reports and duplicate receipts of fish and fish products sold must be sent in weekly in postage paid envelopes provided by the department.

(10) All rough fish taken in the nets must be removed from the lake.

(11) Each net must be run at least once every twenty-four (24) hours.

(12) Each 100 feet of net must have attached one (1) commercial gear tag as required in KRS 150.175, subsection (6). Tags shall be grouped on the inshore end of each continuous net.

(13) A permittee must tag and fish at least 800 yards of nettage an equivalent of twenty-five percent (25%) of the open season.

CARL E. KAYS, Commissioner
MIKE BOATWRIGHT, Chairman
ADOPTED: June 2, 1980
APPROVED: JAMES NAVOLIO, Deputy Secretary
RECEIVED BY LRC: June 9, 1980 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

CABINET FOR DEVELOPMENT
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:145. Gear allowed for commercial fishing.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: It is necessary to accurately describe the gear allowed in commercial fishing so that the limitations and susceptibilities of the gear will permit the harvesting of the proper size and species of fishes, and so that the sport harvest is not affected and the fishery resources perpetuation is assured. *This amendment is necessary to harmonize this regulation with legislation passed by the 1980 Kentucky General Assembly.*

Section 1. The following gear is the only commercial gear that can be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen.

Section 2. Legal Commercial Gear: (1) All lines and mesh must be made of linen, cotton, or flexible synthetic fiber only.

(2) All mesh is measured by bar measure. This measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.

(3) The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, sections (5), (6), (7), and (8).

(4) Gear:

(a) Hoop net, wing net, straight lead net, heart lead net:

1. Must have a minimum mesh size of three (3) inches, except in the Ohio and Mississippi Rivers and those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum mesh size shall be one (1) inch.

2. Hoops may be any size or shape or material.

3. Maximum length of the lead or wing is thirty (30) feet.

4. One (1) commercial gear tag must be attached to the first hoop of each net.

(b) Gill net or trammel net:

1. Are legal gear [only] in Ohio and Mississippi Rivers and overflow lakes directly connected with each river. Minimum mesh size is three (3) inches in the Mississippi and overflow lakes and four (4) inches in the Ohio River and its overflow lakes. *Gill and trammel nets may also be authorized for other waters under certain conditions by separate regulations.*

2. May be fished weighted or as a flag net.

3. Must have one (1) commercial gear tag attached to each 100 feet or part thereof.

(c) Commercial trotline:

1. Must have more than fifty (50) hooks placed no closer than eighteen (18) inches apart.

2. Must have one (1) commercial gear tag attached [for each 100 feet or portion thereof measured from the first to the last hook].

(3) A commercial trotline may be no longer than 1,000 feet, including staging, and must be fished separately, not tied together in a continuous line.

(d) Seine:

1. Must have a minimum mesh size of two (2) inches.
2. Must have both float and lead lines.
3. Must have wood, fiberglass or metal poles or brails attached at each end.
4. When seine is in the water, it must be attended by persons [for] pulling the seine through the water for the entrapment of fish.
5. At no time may a seine be left unattended to act as a set net or other purpose.
6. Must have one (1) commercial gear tag attached to each 100 feet or part thereof.

(e) Slat trap or wood basket:

1. Must be constructed entirely of wood and nails or similar fastenings. No wire or other mesh may be added to any part of trap.
2. There must be at least two (2) openings left between slats no smaller than one and one-fourth (1¼) inches wide in the catch portion of the trap. These openings may not be restricted by cross-bracings to a length shorter than eight (8) inches.
3. The trap may be no larger than two (2) feet in diameter or square end measure.
4. Must have one (1) commercial gear tag attached to opening ring or square.

CARL E. KAYS, Commissioner
MIKE BOATWRIGHT, Chairman
ADOPTED: June 2, 1980
APPROVED: JAMES NAVOLIO, Deputy Secretary
RECEIVED BY LRC: June 9, 1980 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT OF JUSTICE
Bureau of State Police
Division of Security and Compliance
(Proposed Amendment)

*** 502 KAR 25:190. Zoned use areas.**

RELATES TO: KRS 235.240, 235.280, 235.300, *Executive Order 80-125*
PURSUANT TO: KRS 13.082, [1]74.080, 235.280, 235.320, *Executive Order 80-125*
NECESSITY AND FUNCTION: KRS 235.280, *as amended on March 1, 1980 by Executive Order 80-125,* directs the Division of *Security and Compliance* [Water Enforcement] to promulgate regulations to govern the fair, reasonable, equitable, and safe use of the state's waters. This regulation implements the division's responsibility in those areas in regard to specific areas of water within the state where certain activities might be hazardous or undesirable. *Section 5 is added to protect fishermen and occupants of nonmotorized vessels who frequent the area indicated.*

Section 1. No person shall operate a motorboat or other powered vessel towing persons on water skis, surfboards, or similar devices on the water of Herrington Lake, except along the main channel of said lake.

Section 2. No person shall operate a motorboat or other powered vessel at a speed greater than idle speed in the inlets of Herrington Lake known as Rocky Fork, Cane Run, Tanyard Branch and McKecknie Branch.

Section 3. No person shall operate a motorboat or other powered vessel towing persons on water skis, surfboards, or similar devices on the waters of the Little Sandy River.

Section 4. Except for the purpose of locking through the locks of McAlpin Dam, or docking at the Louisville Municipal Wharf, no recreational vessel may be operated on the Ohio River between the Second Street Bridge and McAlpin Dam. Vessels traversing this area must stay within the confines of the commercial channel.

Section 5. No person shall operate a motorboat or other powered vessel at a speed greater than idle speed on the waters of the Salt River within the confines of Mercer County.

* COMPILER'S NOTE: Recodified as a result or reorganization transferring this operation from Department of Transportation to Department of Justice.

KENNETH E. BRANDENBURGH, Commissioner
ADOPTED: June 6, 1980
APPROVED: JERRY ABRAMSON, Acting Secretary
RECEIVED BY LRC: June 11, 1980 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Greg Williamson, Director, Division of Security and Compliance, 114 West Clinton Street, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(Proposed Amendment)

603 KAR 2:015. Pre-qualification for construction; certificate of eligibility.

RELATES TO: KRS 176.130,176.220
PURSUANT TO: KRS 13.082, 174.050, 176.140
NECESSITY AND FUNCTION: KRS 176.140 authorizes the Bureau of Highways to determine the eligibility of bidders for contracts with the bureau. This regulation is adopted to provide a method by which such determination may be made. *The only purpose of this amendment is to raise the limits from $100,000 to $1,000,000 for a contractor not having a financial statement prepared by a CPA or PA; which increase will allow the smaller contractors and minority contractors to expand their company's operations and offer more competition on projects sponsored by the bureau.*

Section 1. Certificate of Eligibility. All organizations and individuals bidding on projects and accepting subcontracts on projects of the Department of Transportation, Bureau of Highways, must be prequalified and possess a certificate of eligibility except as provided below. The certificate shall state the maximum capacity and types of work for which the organizations or individual is qualified. The bureau reserves the right to waive this re-

quirement on certain projects in connection with the letting of contracts not covered by the statutes. Such waiver shall be contained in the notice to contractors and the bid proposal for such projects.

Section 2. Application for Certificate of Eligibility. An organization or individual desiring to procure a certificate shall submit on application and financial statement forms provided by the Bureau of Highways, information relating to the following:

(1) Ability to perform the types of work for which eligibility is requested.

(2) Construction experience resume of the principal officers and key personnel of the organization.

(3) Description of plant and equipment.

(4) Balance sheet and financial statement prepared as of the close of the last fiscal year, or to reflect the current financial status of a newly established organization.

(a) The financial statement of applicants desiring eligibility in excess of *$1,000,000* [$100,000], must be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant will also comply with the specific instructions relative to the presentation of supporting detail requested by the bureau to determine the amount of net current assets available.

(b) The financial statement of applicants desiring eligibility of *$1,000,000* [$100,000] or less, shall be signed by the person preparing the statement and by a principal officer of the organization.

(5) Other information deemed necessary by the bureau to indicate the applicant's capacity and ability to complete highway projects.

Section 3. Method of Computing Maximum Capacity Rating and Maximum Eligibility. (1) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor. The book value of equipment multiplied by six (6) shall be added to the net current assets factor to determine the total maximum capacity factor of the contractor. The contractor's total eligibility rating shall be finally determined by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the percentage factors below and multiply the total allowable percentage by the total maximum capacity factor.

(2) Rating factors:

(a) Organization and experience, twenty (20) percent;

(b) Plant and equipment, forty (40) percent;

(c) Performance, forty (40) percent.

(3) The maximum uncompleted work permitted at any one time as shown on the certificate of eligibility shall be determined by applying the rating of the applicant to the total maximum capacity factor.

Section 4. Issuance of Certificate of Eligibility. (1) The Bureau of Highways shall review application for a certificate of eligibility and make a determination of eligibility within thirty (30) days after the receipt of the application, unless an applicant certifies that he proposes to bid on a specific federal-aid project being advertised within the thirty (30) day period, in which event the bureau shall make a determination of eligibility within fifteen (15) days.

(2) All certificates of eligibility shall terminate not later than 120 days after the end of the applicant's fiscal year unless suspended or revoked. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 2 of this regulation, thirty (30) days is for the bureau's review of the application and, if approved, the issuance of the new certificate of eligibility.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

Section 5. Reconsideration of Decisions of Prequalification Committee. (1) An applicant may request reconsideration of a maximum eligibility rating and/or the types of work set forth in a certificate of eligibility by notifying the Bureau of Highways in writing within ten (10) days after the receipt of a certificate of eligibility. A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates the certificate of eligibility should be amended. The Bureau of Highways shall review the request and notify the applicant of its determination within thirty (30) days after the receipt of a request for reconsideration.

(2) An applicant denied a certificate of eligibility may submit a new application when factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The Bureau of Highways shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.

(3) An interim application may be submitted when there has been a substantial increase in the net current assets of the applicant. Such interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. A new certificate of eligibility may be issued on the basis of the interim application and financial statement.

(4) An applicant, upon receipt of a request from the Bureau of Highways, shall submit an interim financial statement and/or current information relating to the applicant's organization, equipment and work status. The information requested must be submitted within thirty (30) days after the receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension and revocation of a certificate of eligibility.

Section 6. Revocation of Certificate of Eligibility or Reduction of Maximum Capacity. Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, rules, regulations and specifications applicable to a contract or subcontract, the Bureau of Highways may suspend and revoke the certificate of eligibility or reduce the maximum capacity rating. A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by registered mail. The proposed action shall become final unless the certificate holder submits a written request for a hearing within ten (10) days after receipt of the notice. Within ten (10) days after receipt of a request for hearing, the bureau shall set a date for an informal hearing at which time the certificate holder

may submit any pertinent information and evidence. The Bureau of Highways shall advise the certificate holder of its findings within ten (10) days after the informal hearing.

Section 7. Appeals from Pre-qualification Committee Final Rulings. Any person or organization aggrieved by the action taken by the pre-qualification committee in administering these rules and regulations may request a formal hearing before the Commissioner of the Bureau of Highways. The request for the formal hearing shall be filed in writing and shall set forth the nature of the complaint and the grounds for appeal.

DEAN HUFF, Commissioner
ADOPTED: May 14, 1980
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: May 21, 1980 at 9 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Highways, Department of Transportation, State Office Building, Frankfort, Kentucky 40622.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 4:040. Contract completion; changes; retainage.

RELATES TO: KRS 162.060
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: To provide information to confirm a contract which is in accord with the approved completed plans and specifications and to insure that the contract is completed in accord with the plans and specifications.

Section 1. A copy of the bids received based on approved plans and specifications with a copy of the proposed contract on forms provided by the State Board for Elementary and Secondary Education, shall be submitted to the Superintendent of Public Instruction. No contract shall be awarded that is not in accord with the approved completed plans and specifications. The amount of the contract shall not exceed the funds approved by the Superintendent of Public Instruction for the proposed project. The local board of education shall submit to the Superintendent of Public Instruction a copy of the completed contract, a copy of the insurance documents and a copy of the performance and payment bond.

Section 2. (1) Changes in contract, working drawings, specifications, and contract documents, which are within the scope of the project may be approved. A copy of any change order issued in connection with the project must be in writing and signed by the architect or engineer and the contractor as a recommendation and approved in writing by an authorized representative of the local board of education and incorporated in the official minutes of the local board of education. This document shall contain an explanation of the reasons for the change.

(2) Any such change order proposal involving an amount in excess of $2,500 shall first be submitted for approval to the Superintendent of Public Instruction. This statement shall become a part of the contract document.

Section 3. The board of education shall withhold ten (10) percent of the first one million dollars and five (5) percent of the completed performance above one million dollars of the contract price of the work until the work is substantially completed. Upon substantial completion of the work, the ten (10) percent retainage may be reduced to five (5) percent with certification of the architect or engineer and approval of the board of education. No part of the five (5) percent retainage shall be paid until the Superintendent of Public Instruction has made final inspection of the completed construction in accordance with the contract document. The local board of education shall request the required inspection upon approval of the architect's or engineer's certification of substantial completion. *Any agreement or contract entered into by a local board of education involving any portion of the capital outlay fund and/or construction fund, especially the retainage fund for an approved project, may be invested in such a manner that any additional income from said investment will accrue only to the local board of education and to no other party or parties.*

Section 4. (1) The architect or engineer shall furnish the local board of education the appropriate State Board for Elementary and Secondary Education form with applicable information requesting final approval. The local board of educaiton shall approve such form and forward the Superintendent of Public Instruction a completed copy or a letter stating why the board does not agree that the construction is completed.

(2) A written statement approving the completion or a list of items to be completed will be given to the local board of education, with a copy to the architect or engineer. Written approval by the Superintendent of Public Instruction authorizing full payment of the contract will be given when the building project is completed according to plans and specifications and approved change orders.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 20, 1980
RECEIVED BY LRC: June 6, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

703 KAR 2:070. *Interscholastic athletic eligibility and requirements.* [Redshirting prohibited.]

RELATES TO: KRS 156.160(6)
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: This regulation is needed to *establish within the public common schools a*

uniform system of eligibility to participate in interscholastic athletics [eliminate the practice of redshirting or retaining a pupil in an elementary grade for the sole consideration of improvement of the athletic school program in detriment to the childs overall development].

Section 1. Eligibility to Participate in Elementary School Athletics. No pupil enrolled in grades one (1) through eight (8) in the public common school shall be eligible to participate in interscholastic athletics the second year the pupil is enrolled in the same grade, and no public common school shall participate in an athletic contest with another school that does not adhere to this policy.

Section 2. Eligiblity to Participate in Secondary School Athletics. The eligibility of students to participate in interscholastic athletics at the secondary level shall be governed by the constitution by-laws and tournament rules of the Kentucky High School Athletic Association, a copy of which is presented herewith for filing with the Legislative Research Commission and incorporated by reference.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 20, 1980
RECEIVED BY LRC: June 6, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 3:175. Criteria for the unit of school psychologist.

RELATES TO: KRS 157.360
PURSUANT TO: KRS 13.082, 156.030, 156.070, 156.160
NECESSITY AND FUNCTION: KRS 157[6].360 *permits* [requires] the Superintendent of Public Instruction to allot units *for* [to the unit of] school psychologist. The purpose of these criteria is to furnish superintendents and boards of education with the basic requirements for approval of *units for school psychologist.* [special units.]

Section 1. The unit for the position of school psychologist shall be defined as the services provided by a certified school psychologist and described as follows. The school psychologist is a person with a unique combination of skills in psychology and education. The school psychologist is trained in the usual area of psychological study including human development, learning theory, human exceptionalities, group social processes, psychodiagnostics, intervention strategies, and research. In addition, this professional is particularly cognizant of educational theory, school curriculum, school administration, mental health education, and procedures in special education. Furthermore, the school psychologist is trained in applying the principles of this broad background in school settings. Specifically, this practitioner of behavioral science possesses consultative skills which enables combining of the principles of psychology and education. The school psychologist works cooperatively with other members of the pupil personnel team, teachers, children, and other school staff. He/she is also capable of utilizing parents and community resources as a means of enhancing the effectiveness of the school program.

Section 2. (1) A person qualified to serve in an approved unit for school psychologist shall hold either the provisional or standard certificate for school psychologist.
(2) A school psychologist legally certified or licensed for the position of school psychologist and employed within a local school district for the position during the 1978-79 school term shall have continuing approval for serving in the position of school psychologist so long as such legal certification or licensure is kept valid.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 20, 1980
RECEIVED BY LRC: June 6, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 15:080. Paraprofessional personnel.

RELATES TO: KRS 161.010, 161.030, 161.044
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: KRS 161.044 directs the State Board of Education to establish a plan for the utilization of paraprofessional personnel in the schools. This regulation prescribes the guidelines by which local school districts may employ and supervise paraprofessional personnel.

Section 1. Local boards of education may employ adult paraprofessional personnel in accordance with KRS 161.044 and 161.010(6)(7) and subject to these regulations:
(1) For each paraprofessional employee the local school district shall prepare and maintain an up-to-date job description which outlines the duties that the individual is authorized to perform and which further describes the formal preparation or professional judgments of competency that corroborate the qualifications of the individual to perform those duties. The professional administrative and teaching staff may establish formal evaluation procedures to arrive at the professional judgments of competency that are to be entered into the written job description.
(2) The professional administrative and teaching staff, as well as the paraprofessional personnel, shall have copies of the job descriptions of the paraprofessional personnel under their direction and shall limit the work assignment of the paraprofessional personnel to the duties outlined in the job descriptions.

(3) Paraprofessional personnel may be assigned within the limitations of their competency to assist with classroom instruction as personally supervised by the professional administrative and teaching staff. Such assistance shall not include the continuing day-to day responsibility for teaching a particular academic subject or group of pupils in the role ordinarily ascribed to a teacher.

Section 2. In the event a local board of education is unable to staff an athletic program with certified personnel, the local district superintendent may request annual approval from the Superintendent of Public Instruction for an alternative staffing arrangement. Appropriate justification shall be submitted in writing on forms provided by the head of the Bureau of Instruction. As long as a paraprofessional is acting within the scope of authority as set forth in this regulation and KRS 161.010 and 161.044, he/she may assist coaches.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 20, 1980
RECEIVED BY LRC: June 6, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(Proposed Amendment)

803 KAR 1:005. Employer-employe relationship.

RELATES TO: KRS *Chapter 337* [337.275, 337.285]
PURSUANT TO: KRS 13.082, 337.295
NECESSITY AND FUNCTION: KRS 337.010 defines employe as any person employed by or suffered or permitted to work for an employer. The function of this regulation is to discuss what constitutes an employe-employer relation. This will guide the department in carrying out its responsibilities under the law.

Section 1. The Employment Relation. (1) In order for the *law* [Act] to apply there must be an employe-employer relation. This requires an employer and employe and the act or condition of employment.

(2) The courts have made it clear that the employment relation under similar laws, such as the Fair Labor Standards Act, is broader than the traditional common law concept of the master and servant relation. The difference between the employment relation in the *law* [Act] and the common law employment relation arises from the language that employe includes to suffer or permit to work. The courts have indicated that, while "to permit" requires a more positive action than "to suffer," both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done for him by another is sufficient to create the employment relation under the *law* [Act].

(3) The fact that no compensation is paid and the worker is dependent entirely on tips does not negate his status as an employe, if other indications of employment are present. If the worker is paid, the fact that he is paid by the piece or by the job or on a percentage or commission basis rather than on the basis of work time does not preclude a determination that he is, on the facts, an employe with respect to the work for which such compensation is received.

Section 2. Religious, charitable and nonprofit organizations, schools, institutions, volunteer workers, members of religious orders. (1) There is no special provision in the *law* [Act] which precludes an employe-employer relationship between a religious, charitable or nonprofit organization and persons who perform work for such an organization. For example, a church or religious order may operate an establishment to print books, magazines, or other publications and employ a regular staff who do this work as a means of livelihood. In such cases there is an employe-employer relationship for purposes of the *law* [Act].

(2) Persons such as nuns, monks, lay brothers, deacons, and other members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other insitutions operated by their church or religious order shall not be considered to be employes.

(3) In many cases the nature of religious, charitable and similar nonprofit organizations, and schools is such that individuals may volunteer their services in one capacity or another, usually on a part-time basis, not as employes or in contemplation of pay for the services rendered. For example, members of civic organizations may help out in a sheltered workshop; women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or the elderly; mothers may assist in a school library or cafeteria as a public duty to maintain effective services for their children; or fathers may drive a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable educations, or religious programs. The fact that the services are performed under such circumstances is not sufficient to create an employe-employer relationship.

(4) Although the volunteer services (as described in subsection (3) above) are not considered to create an employment relationship, the organizations for which they are performed will generally also have employes performing compensated service whose employement is subject to the standards of the *law* [Act]. Where such an employment relationship exists, the *law* [Act] requires payment of not less than the statutory wages for all hours worked in the workweek. However, there are certain circumstances where such an employe may donate services as a volunteer, and the time so spent is not considered to be compensable work. For example, an office employe of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. The department will not consider that an employe-employer relationship exists with respect to such volunteer time between the establishment and the volunteer or between the volunteer and the person for whose benefit the service is performed. Another example is where an office employe of a church may volunteer to perform non-clerical services in the church preschool during off duty time from his or her office work

as an act of charity. Conversely, a preschool employe may volunteer to perform work in some other facets of the church's operations without an employment relationship being formed with respect to such volunteer time. However, this does not mean that a regular office employe of a charitable organization can volunteer services on an uncompensated basis to handle correspondence in connection with a special fund drive or to handle other work arising from exigencies of the operations conducted by the employer.

(5) As part of their overall educational progam, public or private schools and institutions of higher learning may permit or require students to engage in activities in connection with dramatics, student publications, glee clubs, bands, choirs, debating teams, radio stations, intramural and interscholastic athletics and other similar endeavors. Activities of students in such programs, conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution, are not work of a kind contemplated by the *law* [Act] and do not result in an employe-employer relationship between the student and the school or institution. Also, the fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship.

(6) The sole fact that a student helps in a school lunch room or cafeteria for periods of thirty (30) minutes to an hour per day in exchange for his lunch is not considered to be sufficient to make him an employe of the school regardless of whether he performs such work regularly or only on occasion. Also, the fact that students on occasion do some cleaning up of a classroom, serve the school as junior patrol officer or perform minor clerical work in the school office or library for periods of an hour per day or less without contemplation of compensation or in exchange for a meal or for a cash amount reasonably equivalent to the price of a meal or, when a cash amount is given in addition to a meal, it is only a nominal sum, is not considered sufficient in itself to characterize the students as employes of the school. A similar policy will be followed where the students perform such tasks less frequently but for a full day, with an arrangement to perform their academic work for such days at other times. For example, the students may perform full-day cafeteria service four (4) times per year. In such cases, the time devoted to cafeteria work in the aggregate would be less than if the student worked an hour per day. However, if there are other indicia of employment or the students normally devoted more than an hour each day or equivalent to such work, the circumstances of the arrangement will be reviewed carefully.

(7) In the ordinary case, tasks performed as a normal part of a program of treatment, rehabilitation, or vocational training in the following situations will not be considered as work of a kind requiring a hospital patient, school student, institutional inmate, or handicapped client, to be considered an employe of the hospital, school, institution, or sheltered workshop conducting the program, for the purpose of the *law* [Act]:

(a) Tasks performed by patients in tuberculosis, mental, and other hospitals who are required to remain under treatment for extended periods, when performed as a part of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in the treatment of such patients;

(b) Tasks performed by individuals committed to training schools of a correctional nature, which are required as a part of the correctional program of the institution as a part of the institutional discipline and by reason of their value in providing needed therapy, rehabilitation, or training to help prepare the inmate to become self-sustaining in a lawful occupation after release;

(c) Tasks performed by students in special schools for the mentally handicapped or retarded or for the blind or deaf, as a part of the school program to provide activities of therapeutic value for the handicapped student and to develop such capacities as he may have for doing useful things and, to the extent possible, qualifying for gainful employment; and

(d) Tasks performed by handicapped clients in sheltered workshops, as part of the workshop program, to provide activities of therapeutic, vocational, or training value for the handicapped client and to develop such capacities as he may have for doing useful things and, to the extent possible, qualifying for gainful employment.

(8) The department will not assert that patients under treatment in mental hospitals, or handicapped clients of sheltered workshops are employes when placed in another establishment, such as a private employer, for the performance of tasks which are a continuation of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in their treatment. A different situation prevails, however, after an employment relationship clearly has developed. This shift may occur shortly after the placement or it may occur later. The department will examine the facts of the relationship to determine if an employe-employer relationship exists.

(9) In a program such as described in subsection (8), it is possible that placements may be made with successive employers for short periods of time. It is not expected in the ordinary course that such successive placements will either be very long with a particular employer or that the total time involved with various employers will last for a long period of time. If situations arise where successive placements as part of therapeutic or rehabilitative treatment continue for more than six (6) months, all the facts of the situations will be closely examined.

(10) The department will not assert that mentally retarded and other handicapped individuals' initial participation in a school-work program, or sheltered workshop program constitute an employment relationship if certain conditions are met. However, after an employment relationship has developed, the provisions of the *law* [Act] will be applicable. The conditions under which an employment relationship initially will not be asserted are:

(a) The activities are basically educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the individuals. The individual may receive some payment for his work in order to have a more realistic work situation, or as an incentive to the individual or to insure that the employer will treat the individual as a worker; and

(b) The time in attendance at the school plus the time in attendance at the experience station (either in the school or with an outside employer) does not substantially exceed time the individual would be required to attend school if following a normal academic schedule. Time in excess of one (1) hour beyond the normal school schedule or attendance at the experience station on days when school is not in session would be considered substantial; and

(c) The individual does not displace a regular employe or impair the employment opportunities of others by performing work which would otherwise be performed by regular employes who would be employed by the school or an outside employer.

(11) The shift to an employment relationship may occur shortly after the placement or it may occur later. As a general guide, work for a particular employer, either a private employer or the school, after three (3) months will be assumed by the department to be part of an employment relationship unless the facts indicate that the training situation has not materially changed.

Section 3. Outside work or homework performed by independent contractor. (1) For investigation purposes, it can be assumed that a homeworker is an employe, even though there may be a buying and selling arrangement between the parties.

(2) If the employer asserts his outside work or homework is performed by independent contractors, the following factors will be considered concerning the employe-employer relationship:

(a) Does the employer have the right to control the manner of the performance of the work or the time in which the work is to be done?

(b) Is the employer paying taxes for social security, unemployment, or workmen's compensation insurance?

(c) Has the homeworker ever collected any benefits such as unemployment or workmen's compensation, because of unemployment by the employer?

(d) Does the employer furnish the material or finance directly or indirectly the purchase of the material which the homeworker uses?

(e) When did the practice of buying and selling between the employer and the homeworker begin, and what are the mechanics of the transaction?

(f) Does the homeworker bill the employer for the work done? Are bills of sale prepared? Are sales taxes paid, or are state or local exemptions obtained because of retail purposes? Are payments made in cash or by check?

(g) How does the homeworker's profit under the buying-selling arrangement compare with his or her wages as a homeworker?

(h) Whom does the homeworker consider to be the employer?

(i) Does the homeworker have a license to do business?

(j) What equipment is used, what is its value, and who furnishes it?

Section 4. Test of the employment relation. (1) The principal test for determining whether an employment relation exists is whether the possible employer controls or has the right to control the work to be done by the possible employe to the extent of prescribing how the work shall be performed. Additional considerations are the method of payment and how free the possible employer is to replace the possible employe with another. A determination of the employer-employe relationship cannot be based on isolated factors or upon a single characteristic, but rather upon the circumstances of the whole activity.

(2) The factors which are considered significant, although no single one is regarded as controlling, are:

(a) The extent to which the services in question are an integral part of the employer's business;

(b) The amount of the alleged contractor's investment in facilities and equipment;

(c) The alleged contractor's opportunities for profit and loss; and

(d) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

(3) Where the facts clearly establish that the possible employe is the subordinate party, the relation is one of employment. To determine the amount of control consider:

(a) Whether there are restrictive provisions in the contract between the possible employer and possible employe which require that the work must be satisfactory to the possible employer and detailing, or giving the possible employes the right to detail how the work is to be performed.

(b) Whether the possible employer has control over the business of the person performing work for him even though the possible employer does not control the particular circumstances of the work;

(c) Whether the contract is for an indefinite period or for a relatively long period;

(d) Whether the possible employer may discharge employes of the alleged independent contractor;

(e) Whether the possible employer may cancel the contract at his discretion, and on how much notice;

(f) Whether the work done by the alleged independent contractor is the same or similar to that done by admitted employes.

(4) Since the determination of whether an employment relation exists depends upon the circumstances of the whole activity, particular factors to be considered are:

(a) Is the alleged independent contractor listed on the payroll with the appropriate tax deductions, or are the payments to him charged to the labor and salary account or selling expense account instead of to the account to which attorney's fees, auditor's fees, and the like are charged?

(b) Must employes of the alleged independent contractor be approved by the possible employer?

(c) Does the possible employer keep the books and prepare the payroll for the possible employe?

(d) Is the alleged independent contractor assigned to a particular territory without freedom of movement outside thereof?

(e) Does the alleged independent contractor have an independent economic or other interest in his work, other than increasing his own pay?

(f) How do the respective tax returns of the parties list the remuneration paid?

(g) If the possible employer has control over the manner in which the work is to be performed, the absence of any or all of the factors will not indicate an absence of the employe-employer relation. However, where the element of control cannot be firmly established, they will help in determining whether the relation is one of employer and employe or of independent contractor.

(5) The following factors are immaterial to the determination of whether the relation is one of employer-employe or of independent contractors:

(a) The state or local government grants a license to the alleged independent contractor;

(b) The measurement, method, or designation of compensation;

(c) The fact that no compensation is paid and the alleged independent contractor must rely entirely on tips;

(d) The place where the work is performed; and

(e) The absence of a formal employment agreement.

(6) (a) An employment relation may exist between the parties to a transaction which is nominally a sale. Thus, house-to-house canvassers who sell at retail the products of a particular company are employes of the company, although their contracts with the company are in the form of dealer contracts under which the company purports to sell its products to them at fixed wholesale prices and to recommend retail prices at which the products should be

sold where the control exercised by the company over the so-called dealers is not substantially different than that exercised by an employer over his outside salesman.

(b) Likewise, an employe is not converted into an independent contractor by virtue of a fictitious sale of the goods produced by him to an employer, so long as the other indications of the employment relation exist. Homeworkers who sell their products to a manufacturer are his employes where the control exercised by him over the homeworkers through his ability to reject or refuse to buy the product is not essentially different from the control ordinarily exercised by a manufacturer over employes performing work for him at home on a piece rate basis.

(7) The subject matter of the employment relation must be work or its equivalent. The essential elements of work are:

(a) Physical or mental exertion (whether burdensome or not);

(b) Controlled or required by the employer; and

(c) Pursued necessarily and primarily for the benefit of the employer and his business.

(d) Once it is determined that one who is reputedly an independent contractor, lessee, partner, or the like, is in fact an employe, then all the employes of the so-called independent contractor engaged in the work for the principal employer likewise become the employes of the principal employer, who must guarantee compliance with the *law* [Act]. Thus, the one who is responsible will be charged with seeing to compliance with the *law* [Act] and must keep the records of the employes.

Section 5. Trainees and Student-trainees. (1) The Supreme Court has held that the words "to suffer or permit to work, to define employ, do not make all persons employes who, without any express or implied compensation agreement, may work for their own advantage on the premises of another."

(2) Whether trainees or students are employes of an employer under the *law* [Act] will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all six (6) of the following criteria apply, the trainees or students are not employes within the meaning of the *law* [Act]:

(a) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(b) The training is for the benefit of the trainees or students;

(c) The trainees or students do not displace regular employes, but work under their close observation;

(d) The employer that provides the training derives no immediate advantage from the activities of the trainees or students and on occasion his operations may actually be impeded;

(e) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(f) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

EUGENE F. LAND, Commissioner
ADOPTED: May 28, 1980
APPROVED: H. FOSTER PETTIT, Secretary
RECEIVED BY LRC: June 5, 1980 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Charles E. McCoy, Director, Division of Employment, Standards and Mediation, Kentucky Department of Labor, U.S. 127 South Building, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(Proposed Amendment)

803 KAR 1:035. Hearing procedure.

RELATES TO: KRS 337.020 to 337.405
PURSUANT TO: KRS 13.082, 337.295
NECESSITY AND FUNCTION: KRS 337.310 requires the Commissioner of Labor to decide all questions of fact arising under KRS 337.020 to 337.405. KRS *13.082 and* 337.295 authorizes the commissioner to issue regulations pertaining to these statutes. The function of this regulation is to set up the procedure to be followed by the Commissioner of Labor in deciding the questions of fact as required by the statute and to insure that the parties to proceedings concerning alleged violations of the statutes are afforded a fair opportunity to present any and all relevant proof on the matter.

Section 1. Procedure. (1) The Commissioner of Labor, or his authorized agent, shall investigate any complaint or routinely inspect records relating to an alleged violation of KRS 337.020 to 337.405.

(2) Where a settlement cannot be reached between the employer and employee and if an investigation reveals that *questions of fact are in issue or* the complaint or routine inspection gives the commissioner, or his authorized agent, good cause to *believe that factual issues need to be resolved* [order a fact-finding hearing], then the commissioner, or his authorized agent, shall *evaluate all proof submitted and render his tentative findings of fact. The proof to be evaluated by the commissioner, or his authorized agent, shall include, but is not limited to: the findings of the investigator, sworn affidavits, contractual agreements, payroll records, and other evidence relating to an alleged violation of KRS 337.020 to 337.405.* [set a hearing date in order to make findings of fact concerning the alleged statutory violation. The parties shall be notified of the hearing date by return receipt mail at least fifteen (15) days prior to the hearing.]

(3) The party suffering adversely from these tentative findings of fact shall have fifteen (15) days from the issuance of the findings to submit a petition for reconsideration to the commissioner, or his authorized agent, concerning newly discovered evidence or fraudulently concealed evidence which the party applying could not with reasonable diligence have discovered and produced to the commissioner, or his authorized agent, for evaluation prior to the rendering of tentative findings of fact. The other party shall have five (5) days to present rebuttal proof. If the allegations set forth in the petition for reconsideration are of such weight to give the commissioner good cause to order a fact-finding hearing, then the commissioner, or his authorized agent, shall set a hearing date in order to make final findings of fact concerning the alleged statutory violation. The parties shall be notified of the hearing date by return receipt mail at least fifteen (15) days prior to the hearing.

(4) [(3)] The commissioner, or his authorized agent, may conduct the hearing in either the Frankfort or Louisville offices of the Department of Labor. However, with unanimous consent of the parties and the commissioner, or his authorized agent, the hearing may be held at a site in the Commonwealth mutually agreeable to the parties and the commissioner, or his authorized agent.

(5) [(4)] The hearings shall not be governed by the rules of evidence prevailing in the courts of the Commonwealth. However, due regard will be had for generally accepted

rules of administrative agency hearings in the Commonwealth. A written transcript of the hearing shall be made.

(6) [(5)] Subsequent to the hearing, but within fifteen (15) days of receipt of the hearing transcript, the commissioner, or his authorized agent, shall evaluate the proof and render his tentative findings of fact.

[(6) The party suffering adversely from these tentative findings of fact shall have fifteen (15) days from the issuance of the findings to submit a petition to reopen the hearing to the commissioner, or his authorized agent, concerning newly discovered evidence which the party applying could not with reasonable diligence have discovered and produced at the hearing, or fraudulently concealed evidence. The other party shall have five (5) days to present rebuttal proof. If the allegations set forth in the petition are of such weight to cause the commissioner to reopen the hearing, he shall do so and the parties shall be notified by return receipt mail at least fifteen (15) days before the hearing is reopened.]

[(7) If the additional evidence, concerning newly discovered evidence or fraudulently concealed evidence, is of such weight to cause the commissioner, or his authorized agent, to alter his tentative findings of fact, he shall do so and enter a final order reflecting such changes within fifteen (15) days from the end of time to present rebuttal evidence.]

(7) [(8)] If a petition *for reconsideration* [to reopen the hearing] is not sought or is denied then the tentative findings of fact shall become a final order fifteen (15) days after the issuance of the tentative order.

[(9) Either party may seek review of the commissioner's final order in the circuit court that would have jurisdiction to try an action for breach of contract, pursuant to KRS 337.310(1).]

[(10) Review by the circuit court is limited to a determination of whether:]

[(a) The commissioner, or his authorized agent, acted without or in excess of his powers;]

[(b) The order or decision was procured by fraud;]

[(c) The order or decision is not in conformity with the provisions of KRS 337.020 to 337.405; and]

[(d) If findings of fact are in issue, whether they support the order or decision.]

[(11) The circuit court may affirm, modify or set aside the commissioner's order.]

EUGENE F. LAND, Commissioner
ADOPTED: May 28, 1980
APPROVED: H. FOSTER PETTIT, Secretary
RECEIVED BY LRC: June 5, 1980 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Charles E. McCoy, Director, Division of Employment, Standards and Mediation, Kentucky Department of Labor, U.S. 127 South Building, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:020. Adoption of 29 CFR Parts 1910.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910, the Occupational Safety and Health Standards for General Industry, published by the Commerce Clearing House, Inc., Chicago, Illinois 60646, in the March 1979 Edition, Copyright Date 1979, These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR Part 1910.1 shall read as follows:

"The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR Part 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Commissioner of Labor, Commonwealth of Kentucky.

(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(d) "Employee" means any person employed except those employees excluded in KRS 338.021.

(e) "Standard" means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601.

(3) 29 CFR 1910.141(c)(2)(i) shall read as follows:

"(i) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(4) 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

"(a) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health."

"(b) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first-aid supplies approved by a consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees."

"(c) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First-aid supplies approved by the consulting physician shall be readily available."

"(d) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

(5) 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

"This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the 'inch' position."

(6) 29 CFR 1910.1005 4,4'-methylene bis (2-chloroaniline) and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), Laboratory Activities, printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(7) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows:

"Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(8) 29 CFR 1910.101(b) shall be amended by revocation of referenced pamphlet P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(9) 29 CFR 1910.1028 "Occupational Exposure to Benzene," Paragraph (a)(2)(iii) and Paragraph (k)(2)(iii) were inadvertently transposed in the printing and shall read as follows: 1910.1028(a)(2)(iii) work operations where the only exposure to Benzene is from liquid mixtures containing 0.5 percent (0.1 percent after June 27, 1981) or less Benzene by volume, or the vapors released from such liquids. 1910.1028(k)(2)(iii) liquid mixtures containing 5.0 percent or less Benzene by volume which were packaged before June 27, 1978.

(10) Amend 29 CFR 1910 by adding the following addition and revision:

1910.20 (b) "Qualified Professional" means any person trained in the field of industrial hygiene, toxicology, epidemiology, nursing, medicine or health physics.

1910.20 (d) Availability of records. Delete the word designee and insert "A designated qualified professional."

(11) 29 CFR 1910.106(a)(3) shall read as follows:

"The term automotive service station, or service station, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(12) Amend 29 CFR 1910.217 Mechanical Power Press Standards to read:

(a) "1910.217(b)(8)(iv) All a.c. control circuits and solenoid coils shall be powered by not more than a nominal 120-volt a.c. supply obtained from a transformer with an an isolated secondary."

(b) 1910.217(d)(3), (d)(5), (d)(9)(i) The references to paragraph (b) shall be changed to paragraph (c).

(13) 29 CFR 1910.1025 "Occupational Exposure to Lead" shall be amended as follows:

(a) Add Appendices A, B, and C which appeared in the Federal Register Volume 44, Number 206, October 23, 1979, hereby adopted by reference, copy attached hereto.

(b) Corrections to the Appendices which have been adopted by the U.S. Department of Labor, printed in the Federal Register, Volume 44, Number 232, November 30, 1979, a copy of which is attached hereto, is adopted by reference.

(c) [(b)] Paragraph (a)(2) shall read: "This section does not apply to the Construction Industry or to Agricultural operations covered by 29 CFR 1928."

(14) Subparagraph 29 CFR 1910.23(a)(7) shall be amended to read as follows:

"Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

(15) Subparagraph 29 CFR 1910.252(a)(6)(iv)(d)(2) shall be corrected to read as follows:

"Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of section 1910.309(a) for Class I, Division 2 locations."

(16) 29 CFR 1910.177 "Servicing Multi-Piece Rim Wheels" as printed in the Federal Register, Volume 45, Number 20, January 20, 1980, a copy of which is attached hereto, is adopted by reference.

(17) Amendments to 29 CFR 1910.1043 "Occupational Exposure to Cotton Dust" relating to new start-up dates, printed in the Federal Register, Volume 45, Number 39, February 26, 1980, a copy of which is attached hereto, is adopted by reference.

EUGENE F. LAND, Commissioner
ADOPTED: April 28, 1980
APPROVED: H. FOSTER PETTIT, Secretary
RECEIVED BY LRC: June 13, 1980 at 11:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health Program, U.S. 127 South, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 20:050. Installation permits.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.010, 318.134
NECESSITY AND FUNCTION: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state.

Section 1. Issuance of permits. (1) Except as otherwise provided by subsection (3) of this section, permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage except when the work is done under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them provided:

(a) Application is made for the permit prior to the beginning of the work;

(b) All work is performed in compliance with the state plumbing law and code and the rules and regulations thereunder promulgated;

(c) The work is not performed for monetary gain;

(d) All the work is personally performed by the owner and he does not employ any other person to assist him.

(4) No permit shall be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes.

Section 2. When a permit is required. A plumbing construction permit shall be required for the following: (1) For all new plumbing installations.

(2) For all existing plumbing installations where a fixture or a soil waste opening is to be moved or relocated.

(3) For each individual unit of a multi-story building where there is more than one (1) unit.

(4) For each individual building. (Buildings shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For any other installation which constitutes "plumbing" within the meaning of KRS Chapter 318 and the state plumbing code.

Section 3. Plumbing installation permit fees. (1) The fee for each plumbing installation permit shall be *fifteen dollars ($15)* [twelve dollars ($12)] plus:

(a) *Four dollars ($4)* [Three dollars ($3)] for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) *Four dollars ($4)* [Three dollars ($3)] for each domestic water heater.

(2) In the event only a new domestic water heater is installed or replaced, the fee for the plumbing installation permit shall be ten dollars ($10).

(3) In the event only a new water service is constructed or replaced the fee for the plumbing construction permit shall be ten dollars ($10).

(4) In the event only a new house sewer is constructed or replaced the fee for a plumbing construction permit shall be ten dollars ($10).

(5) In the event only a new private sewage disposal system is constructed or replaced the fee for a plumbing construction permit shall be ten dollars ($10).

(6) All persons securing plumbing permits shall be entitled to plumbing inspections at no additional cost; provided, however, that all inspections in excess of three (3) shall be charged at the rate of three dollars ($3) per inspection.

(7) All plumbing installation permits issued under this regulation shall expire one (1) year after date of issuance thereof; provided, however, if construction is begun within one (1) year after date of issuance the permit shall not expire until completion of the planned plumbing installation.

(8) Plumbing fixtures may be replaced without procuring a plumbing installation permit provided the county plumbing inspector is notified of the installation.

Section 4. Plumbing inspection fees for public buildings. The schedule of fees for inspection of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3.

JOHN R. GROVES, JR., Commissioner
H. FOSTER PETTIT, Secretary
ADOPTED: May 22, 1980
RECEIVED BY LRC: June 13, 1980 at 4:30 p.m.
PUBLIC HEARING: A public hearing on this proposed amendment will be held on July 30, 1980 at 1 p.m. EDT, in the Conference Room of the 127 Building, US 127, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 2:035. Right to apply and reapply.

RELATES TO: KRS 205.200(1), 205.245, 205.520(3)
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has the responsibility of administering public assistance programs under Titles IV-A, XVI and XIX of the Social Security Act, namely Aid to Families with Dependent Children, hereinafter referred to as AFDC, Mandatory and Optional Supplementation of the aged, blind and disabled, hereinafter referred to as MS and OS, and Medical Assistance, hereinafter referred to as MA. This regulation sets forth the procedure by which an application for assistance under these titles is made.

Section 1. Right to Apply or Reapply: Each individual wishing to do so shall have the opportunity to apply or reapply for any assistance program administered by the Department for Human Resources through the Bureau for

Social Insurance. An individual eligible for a money payment [either] from the bureau or *eligible* [from the federal Bureau] for supplemental security income *through the Social Security Administration* is eligible for MA without a separate application. Denial of assistance by the *Social Security Administration* [Bureau] for supplemental security income for technical reasons is also considered a denial of MA.

Section 2. Application Process: An application will be considered to have been made when the individual or his representative has signed, under penalty of perjury, the application form prescribed by the Bureau for Social Insurance or the *Social Security Administration, for supplemental security income,* [Federal Bureau for Supplemental Insurance] and such application has been received at *the appropriate* [an] office [of the bureau].

Section 3. Who May Sign an Application: (1) An application for AFDC shall be signed by the relative with whom a needy child lives[, the parent or natural guardian of the relative,] or the legally appointed committee of the relative.

(2) An application for MA shall be signed by the individual requesting assistance, the relative with whom the child lives, or an interested party acting in behalf of the applicant.

(3) An application for AFDC-FC (foster care) or MA for children in foster care or private child caring institutions shall be signed by the representative of the agency to which the child is committed or the institution in which the child is placed.

(4) An application for state supplementation shall be signed by the aged, blind or disabled individual, *an interested party,* his legally appointed committee or the representative payee receiving the supplemental security income benefit.

Section 4. Where Applications are Filed: *(1)* Applications are to be filed in the office of the Bureau for Social Insurance in the county in which the applicant resides except that a concurrent application for supplemental security income and MA is filed in the service area office of the Social Security Administration.

(2) Applications may be made by a Kentucky resident while temporarily out-of-state by letter from the applicant, by an interested party in the state, or by an out-of-state agency when:

(a) An emergency arises from accident or sudden illness;

(b) Care and services are needed immediately; and

(c) Health would be endangered if he undertook to return to the state.

Section 5. Action on Applications: A decision shall be made on each application *and a check mailed* with reasonable promptness, that is within five (5) days for emergency assistance, forty-five (45) days for AFDC or MA for families and/or children, or sixty (60) days for MA or OS determinations in which permanent and total disability must be established. Exception to the above time standard may be made *when the applicant is cooperating but is unable to obtain necessary verification for an eligibility decision to be made or* in instances in which delay is beyond the control of the bureau, that is failure or delay on the part of the applicant or examining physician or because of some administrative or other emergency that could not be controlled by the bureau[, in which instances the case record shall show the cause for the delay]. *When the above time standards are not met, the case record shall document the cause for the delay.* Failure to process an application within the above time frame shall not be used as the basis for denial.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: May 21, 1980
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 13, 1980 at 8:25 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

Kentucky Teachers' Retirement System

102 KAR 1:021. Repeals 102 KAR 1:020.

RELATES TO: KRS 161.620
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: Entire regulation pertained to method of awarding 1974-76 cost of living payments and is obsolete at this time.

Section 1. 102 KAR 1:020 is hereby repealed.

PAT N. MILLER, Executive Secretary
ADOPTED: May 5, 1980
RECEIVED BY LRC: May 20, 1980 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Pat N. Miller, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Nursing

201 KAR 20:200. Definitions for mandatory continuing education.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.131(1)
NECESSITY AND FUNCTION: The Kentucky Board of Nursing is charged with administering a continuing education requirement for relicensure of nurses beginning in 1982. In order to implement a statewide system of mandatory continuing education, it is necessary for nurses, providers, and the board to use common terminology for communication about continuing education. For the purposes of mandatory continuing education, and regulations pertaining thereto:

Section 1. Definitions. (1) "Approved" means board recognized.

(2) "Completed" means for the purpose of KRS 314.073(2) that contact hours have been earned, reported to and recorded by the board.

(3) "Contact hour" means that which is defined in KRS 314.073(1).

(4) "Continuing education" means that which is defined in KRS 314.011(11).

(5) "Educational unit" means a structural entity with designated administrative and nursing personnel, budget, financial support, facilities, and resources to administer and coordinate continuing education functions.

(6) "Individual nurse participant record" means an approved form submitted by the nurse for reporting contact hours.

(7) "Inservice education" means that part of an employing agency's staff development program designed to provide information related to the work setting such as philosophy, policies, procedures, on-the-job training, orientation, and equipment demonstration as distinguished from an offering designed to meet the approved standards and criteria for continuing education.

(8) "Offering" means an organized learning experience, planned and evaluated to meet behavioral objectives based on assessed learning needs of nurse participants; an offering may be presented in one (1) session or a series of sessions.

(9) "Participants' evaluation summary" means the approved form which summarizes participants' evaluations of an offering.

(10) "Participant roster" means the approved attendance record submitted by the provider.

(11) "Program" means the overall organized effort of a provider directed towards accomplishing objectives of a planned continuing education curriculum which consists of offerings.

(12) "Provider" means an entity which conducts continuing education program/offering(s).

(13) "Provider number" means the permanent, nontransferable number assigned by the board to a provider.

(14) "Self-study" means a self-directed learning experience under the guidance of, and monitored by, an approved provider.

(15) "Successful completion" means the participant has satisfactorily met the specific requirements of an offering.

SHARON M. WEISENBECK, Executive Director
ADOPTED: April 30, 1980
RECEIVED BY LRC: June 9, 1980 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, KY. 40207

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Nursing

201 KAR 20:205. Standards for continuing education offerings.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.031(1), 314.131(1)
NECESSITY AND FUNCTION: In order to implement a statewide system of mandatory continuing education for relicensure of nurses, it is necessary for the board to set standards for continuing education offerings.

Section 1. An Approved Offering. An approved offering shall comply with the board's administrative and offering standards. The applicant for approval of an offering shall submit evidence of:

(1) Faculty/instructor(s) qualifications. The faculty/instructor(s) shall have academic preparation equal to, or greater than, that of the target audience, and shall have expertise in the subject matter, and experience in presenting content to adult learners.

(2) Assessment of learning needs. The justification for approved continuing education shall reflect planning in response to a current, systematic assessment of the learning needs of nurses.

(3) Behavioral objectives. The content, learning activities, teaching methodology, space provided, time allotted, and evaluation shall be based on, and congruent with, the identified behavioral objectives which shall clearly identify the particular skills, attitudes, and knowledge which the learner can expect to acquire as an outcome of participating in the learning activity.

(4) Content of continuing education. The content shall be designed to present current theoretical knowledge to enhance and expand nursing skills, and to promote the development, or change in attitudes necessary to make competent judgments and decisions in nursing.

(5) Principles of adult education. An educational activity shall be based on principles of adult education.

(6) Records and reports. The provider shall have a system for maintaining and retrieving the records of offering(s) and participant attendance.

(7) Evaluation of continuing education. The method of evaluation shall be identified during the planning phase.

Section 2. Applications for approval of an offering shall be submitted in accordance with requirements at least ninety (90) days prior to the scheduled date of presentation.

(1) Approval, if granted, shall be until January 1 of the succeeding year.

(2) An approved offering may be presented as many times as desired during the approval period as long as the board's standards are maintained.

(3) The provider shall notify the board of any change in the administration of the educational unit or planned offering which occurs after approval is granted; failure to do so is grounds for revocation of approval.

SHARON M. WEISENBECK, Executive Director
ADOPTED: April 30, 1980
RECEIVED BY LRC: June 9, 1980 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Nursing

201 KAR 20:210. Standards for a program of continuing education.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.131(1)
NECESSITY AND FUNCTION: It is necessary for the board to develop standards for approval of programs of continuing education for nurses.

Section 1. Program Standards. A program shall comply with the board's administrative, program, and offering standards as defined by the board's criteria for approval. Applications for approval shall be submitted in accordance with the board's requirements, and shall provide evidence of:

(1) Facilities and resources. Facilities and resources shall meet the board's administrative standards and criteria.

(2) Nurse administrator. The nurse administrator of the provider's educational unit shall meet the board's educational requirements, and shall have documented evidence of ability to develop and implement a planned continuing education curriculum.

(3) Curriculum. The planned curriculum identifies each offering and/or session of an offering with the topics listed, and the level and scope of the content planned for each target audience. For each offering and/or session of an offering, the justification for the continuing education activity, the number of contact hours planned, and the proposed faculty and dates shall be identified.

(4) The provider shall immediately notify the board of any change in the administration of the educational unit, and of any substantial change in the planned curriculum. Major changes shall subject the program to another review process.

Section 2. The board shall annually review, revise, and/or adopt policies and guidelines, not inconsistent with the nursing law and regulations, to facilitate the administration of the continuing education requirement for relicensure of nurses.

SHARON M. WEISENBECK, Executive Director
ADOPTED: April 30, 1980
RECEIVED BY LRC: June 9, 1980 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Nursing

201 KAR 20:215. Contact hours.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.131(1)
NECESSITY AND FUNCTION: In implementing the continuing education requirement, it is necessary for the board to develop standards for awarding contact hour(s).

Section 1. To earn contact hour approval, the nurse shall successfully complete the requirements specified by the provider, or as prescribed by the board for an approved continuing education activity. To satisfy the continuing education requirement for an active Kentucky license, contact hours shall be earned in an approved continuing education activity(s).

(1) An approved offering shall consist of at least one (1) contact hour.

(a) An offering may be presented in one (1) session (one (1) contact hour), or a series of sessions, each of which shall provide at least one (1) contact hour.

(b) Fractional parts of a contact hour shall not be approved for an offering.

(2) Academic credit in nursing may satisfy the continuing education requirement. Academic credit may be converted to contact hours as follows:

(a) One (1) semester academic credit hour = fifteen (15) contact hours.

(b) One (1) quarter academic credit hour = twelve (12) contact hours.

(3) Clinical practice which is part of an approved offering that requires the demonstration of specific skills to meet stated behavioral objectives shall satisfy the criteria for one (1) contact hour allowed for two (2) hours of clinical practice as prescribed in KRS 314.073(1).

(4) Self-study may be approved for relicensure beginning in 1984. Prior to 1984, approval of self-study may be considered on an individual basis for those licensees employed or living outside the United States.

(5) Contact hours awarded by another organization may be recognized by the board as equivalent, or comparable provided the organization's standards and criteria for continuing education and the approval mechanism have been reviewed and approved by the board.

Section 2. The following types of courses will not satisfy the continuing education requirements for licensure:

(1) Courses in nursing which were a part of the prescribed curriculum for the licensee's original license.

(2) Courses in other auxillary training programs.

(3) Inservice education as defined in 201 KAR 20:200, Section 1(7).

SHARON M. WEISENBECK, Executive Director
ADOPTED: April 30, 1980
RECEIVED BY LRC: June 9, 1980 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, KY 40207.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Nursing

201 KAR 20:220. Provider approval.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.031(1), 314.131(1)
NECESSITY AND FUNCTION: Only those contact hours earned in approved programs/offerings conducted by approved providers shall satisfy the requirements for relicensure.

Section 1. To administer the continuing education requirement, the board adopts the following standards: Administrative standards. An approved provider shall comply with the following administrative standards:

(1) Educational unit. There shall be within the provider's organizational structure an identifiable educational unit with designated personnel and resources for conducting an organized schedule of continuing education for nurses and for reporting and recording of contact hours according to the requirements of the board's standards and criteria.

(2) Philosophy and objectives. The unit's philosophy and objectives for continuing education shall be consistent with those of the provider organization.

(3) Nurse administrator of continuing education. A nurse, holding a current, active Kentucky nurse license, with experience in adult and continuing education shall be administratively responsible for the provider's educational unit for continuing education for nurses. When deemed necessary to assure the quality of the learning experiences, an approved nurse consultant shall be actively involved in the planning, implementation, and evaluation of continuing education offerings. The educational qualifications of the nurse administrator shall be as follows:

(a) For the licensed practical nursing groups' educational units, the nurse administrator of continuing education shall hold a diploma, or its equivalent, from an approved school of practical nursing.

(b) Other providers' educational units shall have a nurse administrator who holds a baccalaureate or higher degree in nursing or a nurse consultant who meets the nurse administrator qualifications.

(4) Policies and procedures. Written policies and procedures of the provider shall facilitate the efficient operation of the planned continuing education activities and shall clearly define the provider's accountability, financial support, and administrative control necessary to maintain the board's standards and criteria for continuing education and to achieve the objectives of the planned program/offering(s).

(5) Educational facilities and resources. The provider shall have accessible and available, or arrange for, appropriate educational facilities, human resources, necessary instructional aids, and equipment for the planners, faculty/instructor(s), and/or learners consistent with the educational content, format, teaching methodology, and behavioral objectives of each continuing education offering.

(6) Continuing education planners/committee. A committee composed of nurses holding current, active nurse licenses and qualified by education and expertise in the subject matter, and experience in planning adult and continuing education shall be used in planning and evaluating board approved program/offerings; other advisors or consultants may be used as appropriate.

Section 2. Initial Provider Approval. The potential provider shall request an application for consideration as a provider and the board shall assign the potential provider a permanent, nontransferable number. The provider number shall be used to identify all communications, offering announcements, records, and reports.

(1) Applications for consideration as a provider may be submitted at any time during the year.

(2) Application for provider approval should be submitted no later than September 1.

(3) If the potential provider meets the board's standards and criteria, approval shall be granted. An approved provider shall apply for approval of program/offering(s) in accordance with board requirements.

(4) The approval period shall be from January 1 of a year to January 1 of the succeeding year for both providers and continuing education activities.

(a) The approval period will depend upon when the applications are submitted and the review process is completed.

(b) When the review process is not completed to grant approval by January 1, the approval period shall begin on the first day of the month following the completion of the review process.

(c) Retroactive approval shall not be granted.

Section 3. Continued Approval of a Provider. Applications for continued approval as a provider shall be submitted by July 1 for the succeeding year.

(1) Continued approval of the provider shall be based on the past year's performance and compliance with board standards.

(2) The provider's past year performance may be evaluated by participant evaluations, provider evaluation, on-site visits, and/or an audit of the provider's reports and records.

Section 4. The board may deny, revoke, suspend, or probate approval of any provider, continuing education activity, or other approved entity for just cause.

Section 5. Appeal. If a provider is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:

(1) Written requests for the review must be filed with the board within thirty (30) days after the date of notification of the board action which the provider contests.

(2) The board, or its designee, shall conduct a review in which the provider may appear in person and present reasons why the board's decision should be set aside or modified.

SHARON M. WEISENBECK, Executive Director
ADOPTED: April 30, 1980
RECEIVED BY LRC: June 9, 1980 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, KY 40207.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Nursing

201 KAR 20:225. Reinstatement of a lapsed license.

RELATES TO: KRS 314.071, 314.073
PURSUANT TO: KRS 314.021, 314.031(1), 314.131(1)
NECESSITY AND FUNCTION: A license that is not renewed shall lapse and relicensure shall be by reinstatement.

Section 1. Lapsed License. A lapsed license may occur for any of the following reasons:

(1) Failure to apply for license renewal for any reason.

(2) Failure to meet the continuing education requirement as prescribed by law and regulations.
(3) Failure to submit adequate data to enable the board to complete processing an application.
(4) Failure to submit current fee.

Section 2. If a licensee fails to renew an active license as prescribed by law and regulation, the license shall lapse on the last day of the licensed year. The board may issue an active license by reinstatement if the nurse submits an application and fee, meets the continuing education requirements for the current year and completes additional contact hours as prescribed herein:
(1) One (1) year: no additional contact hours.
(2) Two (2) years: five (5) additional contact hours.
(3) Three (3) years: ten (10) additional contact hours.
(4) Four (4) or more years: fifteen (15) contact hours.

Section 3. If a license has been suspended or revoked by the board in a disciplinary action, the terms of reinstatement of the license shall be prescribed by the board. In addition, the nurse shall comply with the requirements prescribed in Section 2 for reinstatement of an active license.

SHARON M. WEISENBECK, Executive Director
ADOPTED: April 30, 1980
RECEIVED BY LRC: June 9, 1980 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, KY 40207

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Kentucky Occupational Safety and Health Program

803 KAR 2:021. Identification, classification and regulation of potential occupational carcinogens.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board.

Section 1. (1) The Occupational Safety and Health Standards Board adopts 29 CFR 1990, the general policy for "Identification, Classification, and Regulation of Potential Occupational Carcinogens." This part, printed in the Federal Register, Volume 45, Number 15, sets forth a general policy for the identification and regulation of physical and chemical substances that pose a potential occupational carcinogenic risk to humans.
(2) These standards are hereby adopted by reference.

EUGENE F. LAND, Commissioner
ADOPTED: April 28, 1980
APPROVED: H. FOSTER PETTIT, Secretary
RECEIVED BY LRC: June 13, 1980 at 11:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health Program, U. S. 127 South, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council

902 KAR 1:101. Diphenoxylate hydrochloride.

RELATES TO: KRS 217.814 to 217.894, 217.990(9), (10)
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Diphenoxylate Hydrochloride with Atropine Sulfate pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Diphenoxylate Hydrochloride with Atropine Sulfate Tablet Pharmaceutical Products. The following Diphenoxylate Hydrochloride with Atropine Sulfate tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Diphenoxylate Hydrochloride 2.5 mg. with Atropine Sulfate .025 mg. Tablet Form:
(1) Colonil: Wallace Laboratories;
(2) Diatro: Richie Pharmacal;
(3) Diphenoxylate Hydrochloride with Atropine Sulfate: Generic Pharmaceutical Corporation, Mylan Pharmaceuticals;
(4) Lomotil: Searle and Company;
(5) Low-Quel: Halsey Drug Company;
(6) SK-Diphenoxylate: Smith, Kline and French;
(7) Uni-Lom: United Research Laboratories.

Section 2. Diphenoxylate Hydrochloride with Atropine Sulfate Liquid Pharmaceutical Products. The following Diphenoxylate Hydrochloride with Atropine Sulfate liquid pharmaceutical products are determined therapeutically equivalent, in each respective dosage: Diphenoxylate Hydrochloride 2.5 mg./5 ml. with Atropine Sulfate .025 mg./5 ml. Liquid Form:
(1) Lomanate: Barre Drug Company, Vangard Laboratories, Three P Products;

(2) Lomotil: Searle and Company;
(3) Lomoxate: Professional Services.

E. C. SEELEY, M.D., Chairperson
ADOPTED: June 5, 1980
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 12, 1980 at 8:40 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council

902 KAR 1:102. Folic acid.

RELATES TO: KRS 217.814 to 217.894, 217.990(9), (10)
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Folic Acid pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Folic Acid Tablet Pharmaceutical Products. The following Folic Acid tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Folic Acid 1 mg. Tablet Form: Danbury Pharmacal, Generic Pharmaceutical Corporation, Halsey Drug Company, McKesson Laboratories, Parmed Pharmaceuticals, Trust Pharmaceuticals.

E. C. SEELEY, M.D., Chairperson
ADOPTED: June 5, 1980
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 12, 1980 at 8:40 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

Emergency Regulations Now In Effect

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 80-439
June 11, 1980

EMERGENCY REGULATIONS
Department for Natural Resources
and Environmental Protection
Regulations Concerning Surface Coal Mining Operations
During the Permanent Regulatory Program

WHEREAS, the policy of the Commonwealth of Kentucky is to retain and exercise primary regulatory authority over surface coal mining and reclamation operations within the Commonwealth; and

WHEREAS, the federal Office of Surface Mining has imposed June 12, 1980, as the last date upon which the Commonwealth can have fully promulgated regulations so as to avoid automatic disapproval of its primacy plan; and

WHEREAS, although many of the requirements imposed on the Commonwealth by the federal Office of Surface Mining are objectionable on constitutional and policy grounds, the 1980 General Assembly has determined that primary authority for regulatory surface coal mining and reclamation operations should be retained by the Commonwealth; and

WHEREAS, the Commonwealth's regulatory program for surface mining and reclamation will continue to be founded and enforced solely on those regulations contained in 405 KAR Chapters 1 and 3; and

WHEREAS, this promulgation does not waive or withdraw the Commonwealth's long-standing objections to certain provisions in the federal regulations that are in excess of statutory authority or are otherwise objectionable; and

WHEREAS, the Secretary of the Department for Natural Resources and Environmental Protection has advised that the promulgation of these regulations, with a postponed effective date, is in the best interests of the Commonwealth in obtaining primacy in surface coal mining and reclamation regulation:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by the authority vested in me by KRS 13.085(2) hereby acknowledge the finding of the Department for Natural Resources and Environmental Protection that an emergency exists and direct that the attached Regulations, to wit 405 KAR Chapters 7-24E, become effective under the terms contained therein and as provided in HB 566 upon being filed with the Legislative Research Commission, and that 405 KAR Chapters 1 and 3 shall continue as the Commonwealth's enforceable regulatory program for surface mining and reclamation.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:020E. Definitions and abbreviations.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Acid-test ratio" means the relation of quick assets to current liabilities.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water upon which surface coal mining and reclamation operations are conducted or located, and land or water which is located above underground mine workings.

(6) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(7) "Applicant" means any person seeking a permit from the department to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(8) "Application" means the documents and other information filed with the department for the issuance of exploration approval or a permit.

(9) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding

terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the department has determined that they comply with KRS Chapter 350, 405 KAR 16:100E, 405 KAR 16:060E, and 405 KAR 16:210E; or 405 KAR 18:100E, 405 KAR 18:060E and 405 KAR 18:220E.

(10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(11) "Area" as used in Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020E, Sections 3 and 4 and 405 KAR 24:030E, Section 8, occur throughout and form a significant feature.

(12) "Asset ratio" means the relation of total assets to total liabilities.

(13) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(14) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable Kentucky or federal laws; and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR 16:060E and 405 KAR 16:090E or 405 KAR 18:060E and 405 KAR 18:090E. The department shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Title 405, Chapters 7 through 24.

(15) "Capital assets" means those assets such as land, buildings and equipment held for use in the production or sale of other assets or services.

(16) "Cash" means:

(a) All cash items except cash:

1. Restricted by an agreement, or
2. Described as earmarked for a particular purpose; and

(b) Short-term investments such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to sell them in the near future is established by the permittee or applicant.

(17) "Cemetery" means any area where human bodies are interred.

(18) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(19) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of Title 405, Chapters 7 through 24.

(20) "Coal processing plant" means a collection of facilities, including all associated support facilities and operations, where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities.

(21) "Coal processing waste" means earth materials which are separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee and which is supported by the deposit with the department of cash, negotiable bonds of the United States, state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) "Combustible material" means material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Common-size comparative balance sheet" means item amounts from a number of the permittee's or applicant's successive yearly balance sheets arranged side by side in a single statement followed by common-size percentages whereby:

(a) The asset total is assigned a value of 100 percent;

(b) The total of liabilities and owner equity is also assigned a value of 100 percent; and

(c) Each individual asset, liability, and owner equity item is shown as a fraction of one (1) of the 100 percent totals.

(25) "Common-size comparative income statement" means a permittee's or applicant's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by common-size percentages whereby net sales are assigned a 100 percent value, and then each statement item is shown as a percentage of net sales.

(26) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(27) "Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.

(28) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(29) "Current assets" means cash and assets that are reasonably expected to be realized in cash or sold or consumed within one (1) year.

(30) "Current liabilities" means debts or other obligations that must be paid or liquidated within a short period of time, usually a year. This shall also include dividends payable on preferred stock within one (1) year.

(31) "Current ratio" means the relation of current assets to current liabilities.

(32) "Day" means calendar day unless otherwise specified to be a working day.

(33) "Department" means the Department for Natural Resources and Environmental Protection.

(34) "Developed water resources land" means land used

for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(35) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.

(36) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(37) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(38) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(39) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(40) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the effective date of this regulation as specified in Section 3.

(41) "Experimental practice", as used in 405 KAR 7:060E, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.

(42) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(43) "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(44) "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87, 91 Stat. 445 (30 USC Section 1201 et.seq.)) to regulate surface coal mining and reclamation operations on federal lands.

(45) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(46) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(47) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentrations of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources.

(48) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(49) "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(50) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(51) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

(52) "Grazingland" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(53) "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(54) "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(55) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(56) "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity.

(57) "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects.

(58) "Historically used for cropland" means that:

(a) Lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the application; or

(b) Lands have been used for cropland for any five (5) years out of the ten (10) years preceding the acquisition of the land for the purpose of conducting surface coal mining

and reclamation operations; or

(c) Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years, immediately preceding such acquisition but for some fact of ownership or control of the land unrelated to the productivity of the land.

(59) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(60) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(61) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(62) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(63) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(64) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, solution mining, borehole mining, and fluid recovery mining.

(65) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year, or;

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(66) "Irreparable damage to the environment" as used in 405 KAR 8:010E, Sections 13(4) and 14(9) only, means any damage to the environment that cannot be corrected by actions of the applicant.

(67) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(68) "Liquidity ratio" means the relation of cash to current liabilities.

(69) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(70) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(71) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(72) "Net profit" means the bottom line of the income statement after taxes, including taxes based on income, adjustments, all extraordinary income and expense, but before preferred and common stock dividends.

(73) "Net worth" means preferred and common stock, all surplus accounts, and retained earnings.

(74) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the department which sets forth with specificity the violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the department determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(75) "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(76) "Noxious plants" means species classified under Kentucky law as noxious plants.

(77) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(78) "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(79) "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles within twelve (12) consecutive calendar months in any one (1) location, or who removes overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit.

(80) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(81) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(82) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage

plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(83) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream or ephemeral stream."

(84) "Performance bond" means a surety bond, collateral bond, cash bond, letter of credit or a combination thereof, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(85) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the department and other appropriate Kentucky and federal agencies.

(86) "Permit" means written approval issued by the department to conduct surface coal mining and reclamation operations.

(87) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(88) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS 350 and Title 405, Chapters 7 through 24 are satisfied.

(89) "Person" means an individual, partnership, association, society, joint venture, joint stock company, firm, company, corporation, or other business organization.

(90) "Person having an interest which is or may be adversely affected or person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations.

(91) "Petitioner" means a person who submits a petition under Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under Title 405, Chapter 24 to terminate such a designation.

(92) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a specified period of time.

(93) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(94) "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock.

(95) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(96) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(97) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(98) "Public building" means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(99) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(100) "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(101) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(102) "Quick assets" means cash and current assets that can be quickly turned into cash.

(103) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(104) "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 under a plan approved by the department.

(105) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(106) "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(107) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(108) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(109) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(110) "Retained earnings" means stockholder's equity that has arisen from retained assets from earnings in the business. This shall include only earnings from normal operations and not gains from such transactions as the sale of plant assets or investments.

(111) "Return on investment" means the relation of net profit for the last yearly period to ending net worth.

(112) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road

consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(113) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(114) "Secretary" means the Secretary of the Department for Natural Resources and Environmental Protection.

(115) "Sedimentation pond" means a primary sediment control structure designed, constructed and maintained in accordance with 405 KAR 16:090E or 405 KAR 18:090E and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(116) "Self-bond" means an indemnity agreement in sum certain payable upon demand to the regulatory authority.

(117) "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the department's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(118) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(119) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer tht typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(120) "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(121) "Spoil" means overburden that has been removed during surface coal mining operations.

(122) "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(123) "Steep slope" means any slope of more than twenty (20) degrees.

(124) "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(125) "Subsequent order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the department when a person to whom a notice of noncompliance and order for remedial measures has failed, as determined by inspection by the department, to comply with the terms of the notice of noncompliance and order for remedial measures. The subsequent order for cessation and immediate compliance shall set forth with specificity:

(a) That the period of time as originally set forth in the notice of noncompliance and order for remedial measures, or as subsequently extended, has expired;

(b) That the violation has not been abated as ordered, or the ordered remedial measures have not been completed;

(c) That the person is ordered to immediately cease those portions of the surface coal mining and reclamation operations or coal exploration operations which are relevant to the violation;

(d) The steps necessary to abate the violation and complete the required remedial measures in the most expeditious manner possible; and

(e) That the document and order constitute an order of the department requiring immediate compliance.

(126) "Substantially disturb" means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(127) "Surety bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(128) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining or by extraction of coal from coal refuse piles.

(129) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining

coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine-site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; or the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(130) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(131) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(132) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the department to remain after reclamation as part of the approved postmining land use.

(133) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(134) "Topsoil means the A soil horizon layer of the three (3) major soil horizons.

(135) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(136) "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(137) "Transfer, assignment or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the department.

(138) "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

(139) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(140) "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(141) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, permit conditions; or

(b) To comply with any notice or order of the department.

(142) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(143) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(144) "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (PL 95-87), KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or any permit condition, or any notice or order of the department committed by a person who intends the result which actually occurs.

(145) "Working capital" means the excess of the permittee's or applicant's current assets over his current liabilities.

Section 2. Abbreviations. As used in Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac—acre
CFR—Code of Federal Regulations
dB—decibels
FDIC—Federal Deposit Insurance Corporation
FSLIC—Federal Savings and Loan Insurance Corporation
Hz—hertz
KAR—Kentucky Administrative Regulations
KRS—Kentucky Revised Statutes
l—liter
mg—miligram
MRP—mining and reclamation plan
MSHA—Mine Safety and Health Administration
NPDES—National Pollutant Discharge Elimination System

SCS—Soil Conservation Service
SMCRA—Surface Mining Control and Reclamation Act of 1977, Public Law 95-87
USDA—United States Department of Agriculture
USDI—United States Department of Interior
USGS—United States Geological Survey

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:030E. Applicability.

RELATES TO: KRS 350.010, 350.028, 350.057, 350.060, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation designates Title 405, Chapters 7 through 24 as applicable to all coal exploration and surface coal mining and reclamation operations, and specifies those activities to which Title 405, Chapters 7 through 24 do not apply. This regulation reflects the jurisdiction of the department over coal exploration and surface coal mining and reclamation operations and sets forth certain non-jurisdictional activities.

Section 1. Statutory Authority and Applicability. Chapters 7 through 24 of Title 405 are promulgated pursuant to KRS Chapters 350 and 224 only as amended by the 1980 Kentucky General Assembly. Title 405, Chapters 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except:
(1) The extraction of coal for commercial purposes where the surface coal mining and reclamation operation affects two (2) acres or less in accordance with Section 2;
(2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;
(3) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 ⅔) percent of the mineral tonnage removed for commercial use or sale.

Section 2. Two (2) Acre Operations. All land disturbed by the coal extraction and incident to the coal extraction (including haul roads) and all bodies of water within the boundaries of the disturbed land shall be included in the two (2) acre calculation. The exemption does not apply to coal loading, processing, or preparation facilities or to coal extraction conducted by a person who affects or intends to affect more than two (2) acres at physically related sites.

Section 3. Coal Extraction Incidental to Government-Financed Construction.
(1) (a) Coal extraction which is an incidental part of government-financed construction is exempt from KRS Chapter 350 and Title 405, Chapters 7 through 24 except subsection (2) of this section shall apply.
(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this subsection shall not proceed until a permit has been obtained from the department.
(c) Reclamation of abandoned mined lands funded under Title IV of SMCRA shall be deemed government-financed construction.
(2) Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two (2) acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:
(a) A description of the construction project;
(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and
(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:040E. General obligations of operators and permittees.

RELATES TO: KRS 350.050, 350.057, 350.060, 350.410, 350.450
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.057, 350.060, 350.090, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to surface coal mining and

reclamation operations. This regulation sets forth the basic requirements and general obligations of operators and permittees. This regulation prescribes certain methods of disposal of materials and other obligations of operators and permittees.

Section 1. General Requirements for Permits and Exploration Approvals. (1) Requirement to obtain a permit. No person or operator shall engage in surface coal mining and reclamation operations without first having obtained from the department a valid permit covering the area of land to be affected.

(2) Requirement to obtain exploration approval. Subject to the provisions of 405 KAR 8:020E, no person or operator shall engage in coal exploration operations without first having obtained written approval from the department.

(3) Requirement to comply with permit or exploration approval. A permittee or person issued a coal exploration approval shall comply with all terms and conditions placed upon the permit or exploration approval by the department and with all plans submitted as part of the application approved by the department.

Section 2. When Permit Required. Any person who conducts or intends to conduct surface coal mining and reclamation operations on or after eight (8) months from the date of publication in the Federal Register of the notice of approval of the Commonwealth of Kentucky's Permanent Regulatory Program by the United States Department of Interior shall have a permit issued pursuant to Title 405, Chapter 8. Any person conducting surface coal mining and reclamation operations under a permit issued by the department prior to the date of publication of the aforementioned notice in the Federal Register may continue to conduct those operations after the expiration of the eighth month subsequent to such notice provided:

(1) Such person filed a complete application for a permit with the department within two (2) months following the date of publication of the notice referred to in this section;

(2) The department has neither approved nor rejected the application for the permit; and

(3) Such operations are being conducted in compliance with all terms and conditions of the permit previously issued by the department prior to the date of publication in the Federal Register of the notice referred to in this section, pursuant to the requirements of KRS Chapter 350. The applicable requirements of Title 405, Chapters 1 and 3 in effect upon the date of issuance of the permit, and as amended prior to the date of the aforementioned notice, shall be deemed to constitute terms and conditions of the permit notwithstanding the subsequent repeal of Title 405, Chapters 1 and 3.

Section 3. Disposal of Materials. A person or operator engaged in surface coal mining and reclamation operations shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350.

Section 4. Unsafe Practices. (1) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(2) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(3) Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall immediately notify the persons whose life, health or property are so threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall immediately provide notice of the emergency conditions to the department, to local law enforcement officials and to appropriate local government officials. Any emergency action taken by an operator pursuant to this subsection shall not relieve the operator of other obligations pursuant to Title 405, Chapters 7 through 24, or of obligations under other applicable local, state or federal laws and regulations.

Section 5. Existing Structures on Areas Sought to be Permitted. (1) Except as provided in subsection (2), no application for a permit or a revision which proposes to use an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the department finds, in writing, on the basis of complete information set forth in the complete application that:

(a) Irrespective of whether the structure meets the design requirements of Title 405, Chapters 16 through 20, the existing structure will operate in compliance with the performance standards set forth in Title 405, Chapters 16 through 20;

(b) No significant harm to the environment or public health or safety will result from the use of the structure; and

(c) The applicant will monitor the structure as required by the department to determine compliance with the performance standards of Title 405, Chapters 16 through 20.

(2) In the event the applicant fails to demonstrate that the existing structure meets the requirements of subsection (1), no application for a permit or revision which proposes to use such an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved unless the applicant demonstrates and the department finds, in writing, on the basis of complete information set forth in the complete application that:

(a) Such existing structure complies with the performance standards of Title 405, Chapter 1 or Title 405, Chapter 3; and

(b) Title 405, Chapters 16 through 20 require performance standards for such existing structure which are either not required by or more stringent than the performance standards of Title 405, Chapter 1 or Title 405, Chapter 3; and

(c) The applicant has included as a part of the application a compliance plan for modification or reconstruction of the structure demonstrating:

1. That the modification or reconstruction of the structure will bring the structure into compliance with the performance standards of Title 405, Chapters 16 through 20

as soon as possible but not later than six (6) months from the date of issuance of the permit required by Section 2 hereof unless the applicant demonstrates to the satisfaction of the department that a longer time is necessary due to the scope and nature of the reconstruction;

2. That the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

3. The applicant will monitor the structure as required by the department to determine compliance with the performance standards of Title 405, Chapters 16 through 20.

(d) Should the department find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon or remove the existing structure in the manner provided in 405 KAR 16:010E or 405 KAR 18:010E. The structure shall not be used for or to facilitate surface coal mining operations after the date of issuance of the permit described in Section 2 hereof.

(3) In the event that Title 405, Chapter 1 or Title 405, Chapter 3 prescribes a performance standard applicable to any such existing structure which performance standard has not been complied with by the applicant, no permit shall be issued by the department unless the applicant shall have redesigned and reconstructed such existing structure in accordance with the design requirements of Title 405, Chapters 16 through 20.

(4) Existing structures allowed to operate subsequent to permit approval as provided in subsection (1) of this section shall not include coal waste piles used either temporarily or permanently as dams or embankments. Such existing coal waste piles allowed to operate subsequent to permit approval as provided in subsection (2) of this section must be modified or reconstructed in order to comply with the design requirements of Title 405, Chapters 16 through 20 in addition to the performance standards.

(5) Any structures or facilities which must be reconstructed pursuant to subsection (2) of this section shall be reconstructed according to engineering plans prepared under the direction of a registered professional engineer. Upon completion of reconstruction, the responsible engineer shall certify to the department, within fourteen (14) days thereafter, in a manner prescribed by the department, that the reconstruction was performed in accordance with accepted engineering practices and in accordance with the approved design plans.

Section 6. Hazard Classifications for Impoundments. (1) For proposed new sedimentation ponds or other new impoundments and those proposed for reconstruction pursuant to Section 5(2) and (3), the responsible design engineer shall determine the structure hazard classification according to the classification descriptions. For structures classified (B)—moderate hazard or (C)—high hazard, the operator shall obtain a permit from the department, Division of Water Resources, pursuant to KRS 151.250, and regulations adopted pursuant thereto, prior to beginning reconstruction or construction.

(2) Structure hazard classifications are as follows: The following broad classes of structures are established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

(a) Class (A); low hazard: Structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads;

(b) Class (B); moderate hazard: Structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruption of use or service of relatively important public utilities.

(c) Class (C); high hazard: Structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification must be used if failure would cause probable loss of human life.

(3) The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the sitenand probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria be exceeded, as determined by the department. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the design drawings.

(4) When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure must be considered in assigning the structure classification of the upstream structure.

Section 7. Maps and Reports. (1) Mine map. Any operator or person conducting surface coal mining and reclamation operations on and after the date specified in Section 11, shall include in the permit application required by Section 2 hereof an accurate map of the mine and permit area at a scale between 1:6000 or larger. The map shall show as of the date specified in Section 11, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining.

(2) Other reports required. The operator shall submit such other reports, documentation, certifications, or other information as the department may require, or as may be required by KRS Chapter 350 and regulations adopted pursuant thereto.

Section 8. Coal Exploration. (1) Any person conducting coal exploration on or after the date specified in Section 11 shall either file a Notice of Intention to Explore or obtain approval of the department as required by 405 KAR 8:020E.

(2) The coal exploration performance standards in 405 KAR 20:010E shall apply to coal exploration which substantially disturbs the natural land surface two months after the date specified in Section 11.

Section 9. Compliance with Title 405, Chapters 7 through 24 does not relieve any person or operator from the obligation to comply with other applicable regulations of the department.

Section 10. The requirement to restore the approximate original contour of the land shall apply regardless of any reconstruction of any existing structure allowed pursuant to Section 5.

Section 11. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:060E. Experimental practices mining.

RELATES TO: KRS 350.020, 350.028, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to surface coal mining and reclamation operations that are no more stringent than SMCRA. This regulation governs the granting and approval of experimental mining practices that encourage advances in mining reclamation and postmining land use practices.

Section 1. General. (1) Applicability. This regulation shall apply to any person who conducts or intends to conduct surface coal mining and reclamation 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, Chapters 16 through 20 and such variance is not otherwise obtainable under Title 405, Chapters 7 through 24.

(2) This regulation sets forth requirements for the permitting of surface coal mining and reclamation 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, Chapters 7 through 24, if approved pursuant to this 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 department and the secretary.

(2) Application requirements. Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the department and the secretary. 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, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the regulations of Title 405, Chapters 7 through 24.

(c) That the mining and reclamation 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 mining and reclamation operations, as those required under Title 405, Chapters 7 through 24; and

2. Will not reduce the protection afforded public health and safety below that provided by the requirements of Title 405, Chapters 7 through 24.

(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 department and the secretary to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices; and

2. Include requirements designed to identify, as soon as possible, potential risks to the environment 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, Chapters 7 through 24 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 department required under 405 KAR 8:010E, Section 8.

(4) Criteria for approval. No permit authorizing an experimental practice shall be issued, unless the department in writing, upon the basis of both a complete application filed in accordance with the requirements of this regulation and Title 405, Chapter 8 and the comments of the secretary, 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;

(c) The experimental practice has been specifically approved, in writing, by the secretary, based on the secretary's findings that all of the requirements of subsection (2)(a) through (e) of this section will be met; and

(d) The permit contains conditions which specifically:

1. Limit the experimental practice authorized to that granted by the department and the secretary.

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 department or the secretary 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 department or at least once prior to the middle of the per-

mit term. After review, the department shall, with the consent of the secretary, 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) of this section shall be provided with an opportunity for a hearing as established in 405 KAR 8:010E.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:080E. Small operator assistance.

RELATES TO: 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation sets out the federal small coal operator assistance program and establishes procedures to provide assistance to eligible operators who request assistance. The regulation specifies the assistance to be given to small operators whose total annual production does not exceed 100,000 tons.

Section 1. Scope. This regulation comprises the small operator assistance program (Program) and governs the procedures for providing assistance to qualified small mine operators who request assistance for:

(1) The determination of the probable hydrologic consequences of mining and reclamation, under Title 405, Chapter 8; and

(2) The statement of physical and chemical analyses of test borings or core samples, under Title 405, Chapter 8; and

(3) Such other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 for which financial or other assistance may be available under this program.

Section 2. Objective. The objective of this regulation is to meet the intent of KRS 350.465(2)(f) by:

(1) Providing financial and other necessary assistance to qualified small operators; and

(2) Assuring that the department shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the watershed(s) and particularly upon water availability.

Section 3. Authority. The secretary shall provide financial and other assistance under KRS 350.465(2)(f) to the extent that state funds are made available and to the extent that funds are appropriated by the United States Congress specifically for implementation of Section 507(c) of PL 95-87 and made available to the Commonwealth.

Section 4. Program Services. To the extent possible with available funds, the department shall for qualified small operators who request assistance:

(1) Select and pay a qualified laboratory to:

(a) Determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with Section 8.

(b) Prepare a statement of the results of test borings or core samplings in accordance with Section 8.

(2) Collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

(3) Authorized representatives of the department shall conduct periodic on-site evaluations of the program activities with the qualified small operator.

Section 5. Eligibility for Assistance. An applicant is eligible for assistance if he:

(1) Intends to apply for a permit pursuant to KRS Chapter 350; and

(2) Establishes that the probable total actual and attributed production of the applicant for each year of the permit will not exceed 100,000 tons. Production from the following operations shall be attributed to the permittee:

(a) All coal produced from any mine operation beneficially owned or operated entirely by the applicant.

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations owned wholly or in part by the individual owners or stockholders of the applicant, or by the applicant itself.

(3) "Beneficially owned or operated" and "beneficial ownership" means the owners or stockholders have full or limited control over the disposition of the coal resource.

Section 6. Filing for Assistance. Each applicant shall submit the following information to the department at any time after initiation of the Small Operator Assistance Program within the Commonwealth of Kentucky:

(1) A statement of intent to file a permit application; and

(2) The names, addresses, and social security numbers of:

(a) The potential permit applicant;

(b) All owners and stockholders of the applicant and each person's percentage of ownership;

(c) The potential operator if different from the applicant.

(3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 5. The schedule shall include for each location:

(a) The name under which coal is or will be mined;

(b) The permit number if currently or previously permitted;
(c) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant;
(d) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant;
(e) MSHA identification number for the mine site;
(f) Mine location (county);
(g) Kentucky coal severance tax vendor number and copies of payments for the past twelve (12) months; and
(h) Kentucky map file number from the Department of Mines and Minerals if available.
(4) A description of:
(a) The method of surface coal mining operation proposed;
(b) The anticipated starting and termination dates of mining operations;
(c) The total number of acres of land to be affected by the proposed mining and number of acres from which coal is to be removed; and
(d) A general statement on the probable depth, thickness, and name of the coal seams to be mined.
(5) A USGS topographic map of 1:6,000 scale or larger or other topographic map of equivalent detail which clearly shows:
(a) The area of land to be affected and the natural drainage above and below the affected area;
(b) The names of property owners within the area to be affected and of adjacent lands;
(c) The location of existing structures and developed water sources within the area to be affected and on adjacent lands;
(d) The location of existing and proposed test borings or core samplings;
(e) The location and extent of known workings of any underground mines; and
(f) The location of coal beds to be mined.
(6) Copies of documents which show that:
(a) The applicant has a legal right to enter and commence mining within the permit area; and
(b) A legal right of entry has been obtained for the department and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

Section 7. Application Approval and Notice. (1) If the department finds the applicant eligible, and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:
(a) Determine the minimum data requirements necessary to meet the provisions of Section 8.
(b) Select the services of one (1) or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved report shall be provided to the applicant.
(2) The department shall inform the applicant in writing if the application is denied and shall state the reasons for denial.
(3) The granting of assistance under this part shall not be a factor in decisions by the department on a subsequent permit application.

Section 8. Data Requirements. (1) General. This section describes the minimum requirements for the collection of data to meet the objectives of this program. The department shall determine the data collection requirements for each applicant or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the applicant.
(2) Specific provisions. The following data may be supplied under this program:
(a) Surface mines:
1. 405 KAR 8:030E, Section 12; General requirements for geology and hydrology.
2. 405 KAR 8:030E, Section 13; Geology information.
3. 405 KAR 8:030E, Section 14; Ground water information.
4. 405 KAR 8:030E, Section 15; Surface water information.
5. 405 KAR 8:030E, Section 16; Alternative water supply information.
6. 405 KAR 8:030E, Section 32(3); Determination of probable hydrologic consequences of mining.
(b) Underground mines:
1. 405 KAR 8:040E, Section 12; General requirements for geology and hydrology.
2. 405 KAR 8:040E, Section 13; Geology information.
3. 405 KAR 8:040E, Section 14; Ground water information.
4. 405 KAR 8:040E, Section 15; Surface water information.
5. 405 KAR 8:040E, Section 16; Alternate water supply information.
6. 405 KAR 8:040E, Section 32(3); Determination of the probable hydrologic consequence of mining.
(3) Data availability. Data collected under this program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

Section 9. Qualified Laboratories. (1) General:
(a) As used in this section, "qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination, statement, or other eligible services under this program.
(b) The department shall establish and periodically publish a list of qualified laboratories which may be used by the department under the procedures of this section.
(c) Persons who desire to be included in the list of qualified laboratories established by the department shall apply to the department and provide such information as is necessary to establish the qualifications required by subsection (2) of this section.
(2) Basic qualifications:
(a) To qualify for designation the laboratory shall demonstrate that it:
1. Is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed.
2. Is capable of collecting necessary field data and samples.
3. Has adequate space for material preparation, cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads.
4. Meets the requirements of the Occupational Safety and Health Act or the equivalent Commonwealth safety and health program.

5. Has the financial capability and business organization necessary to perform the work required.
6. Has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in: "Standard Methods for the Examination of Water and Waste Water," 14th Edition, 1975; "Methods for Chemical Analysis of Water and Wastes," 1974; and other references as specified by the department.
7. Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by the department.
(b) The qualified laboratory shall be capable of performing some or all of the services set forth in Section 8. Subcontractors may be used to provide the services required provided their use is defined in the application for designation and approved by the department.

Section 10. Applicant Liability. (1) The applicant shall reimburse the department for the cost of the laboratory services performed pursuant to this regulation if the applicant:
(a) Submits false information;
(b) Fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory report;
(c) Fails to mine after obtaining a permit; or
(d) If the department finds that the applicant's actual and attributed annual production of coal exceeds 100,000 tons during any year of mining under the permit for which the assistance is provided.
(2) The department may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

Section 11. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:090E. Hearings.

RELATES TO: KRS 224.033, 224,081, 224,083, 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990
PURSUANT TO: KRS 13.082, 224.033, 350.020, 350.028, 350.255, 350.465, 350.610
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration. This regulation sets forth hearing, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

Section 1. Applicability. This regulation shall govern the conduct of all hearings by the department for the review of determinations on permits for surface coal mining and reclamation operations and coal exploration including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; subsequent orders for cessation and immediate compliance; orders to abate and alleviate conditions creating imminent danger or harm to persons or property pursuant to KRS 350.130(4) and relevant to the department's authority pursuant to KRS Chapter 350, determination on performance bond amount, duration, release and forfeiture and all other matters which in the discretion of the department are appropriate for adjudication and determination by the department and arise by virtue of an order or determination of the department pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration as set forth in KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 2. Construction. This regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1. In all cases and to the extent consistent with the prompt resolution of disputes, these regulations shall be construed against waivers of any rights and duties for a full determination of disputed issues arising under this title.

Section 3. Formal Hearing:
(1) (a) Except hearings on an order to abate and alleviate conditions creating imminent danger to persons or property, pursuant to KRS 350.130(4), any person aggrieved by an order or determination of the department may, by written notice, request pursuant to KRS 224.081(2) that a hearing be conducted by the department. The right to demand such a hearing shall be limited to a period of thirty (30) days after the requestor has had actual notice of such action, or could reasonably have had such notice. The department shall schedule a hearing before the department not less than twenty-one (21) days after the notice of demand for such a hearing, unless the person complained against waives in writing the twenty-one (21) day period.
(b) Any person to whom was issued a notice of noncompliance and order for remedial measures or subsequent order for cessation and immediate compliance may request a hearing with the department pursuant to paragraph (a) of this subsection. The request for a hearing shall include a short and plain statement why either the amount of the penalty proposed to be assessed or the fact of the violation is being contested. The request for a hearing shall plainly identify the notice or order that the requestor is contesting. If the hearing requested is expeditiously docketed and it otherwise appears that all issues relevant to the case will be fully decided, and the person against whom the assessment is proposed waives the twenty-one (21) day period pursuant to paragraph (a) of this subsection, the department may present the notice of penalty assessment as required pursuant to paragraph (c) of this subsection at the time the hearing is held.
(c) The timely filing of a request for an informal con-

ference pursuant to Section 4 shall suspend the running of the thirty (30) day period for requesting a formal hearing as set forth in paragraphs (a) and (d) of this subsection. The suspension shall continue until completion of the informal conference. Any person so requesting shall have fifteen (15) days after the completion of the informal conference to request a formal conference.

(d) The department shall notify any person to whom was issued a notice of non-compliance and order for remedial measures or a subsequent order for cessation and immediate compliance of the proposed penalty assessment. The department shall have a reasonable time not to exceed thirty (30) days from the issuance of the notice or order to send its notice of penalty assessment to that person. Subject to paragraph (b) of this subsection, the person to whom was sent a proposed penalty assessment shall have thirty (30) days from receipt of the proposed assessment to request a hearing; provided, however, where a request for a hearing was made on the notice or order giving rise to the proposed assessment, no separate request for a hearing shall be required.

(e) After a request for a hearing on a proposed penalty assessment or after a hearing has otherwise been requested, that person shall pay to the department the full amount of the proposed assessment into an escrow account at least seven (7) days before the date of the formal hearing. Both challenges to the notices and the proposed penalty assessment may be disposed of under the informal conference procedures as set forth in this regulation.

(f) Failure to request a hearing pursuant to this section within the prescribed time period shall be considered a waiver of the right to contest the fact of the violation or the proposed penalty. The department shall then enter a final order finding that that person should be considered to have waived his right to a hearing and that the facts alleged in any notice or order sent or given to that person should be deemed admitted, and that a final order of the department should be issued constituting a final adjudication of the department of the violations cited and of the proposed penalty. Failure to appear without good cause or failure to comply with any pre-hearing or interlocutory order of the hearing officer shall be grounds for a default. A timely request for an informal hearing pursuant to Section 4 shall not constitute a waiver of subsequent hearing rights if made within twenty (20) days of actual notice as set forth in paragraph (a) of this subsection.

(2) The department may initiate show cause proceedings and hearings whenever the department has reason to believe that a violation of KRS Chapter 350, Title 405, Chapters 7 through 24 has occurred or is occurring. The department shall also initiate hearings whenever the department has reason to believe that additional remedies should be sought or order entered against any person to adequately protect the environment or protect the health and safety of the public. The complaints issued by the department may require a person to show cause why his permit should not be suspended or revoked or his bond forfeited. The notice of hearing shall include a statement of the time, place and nature of the hearing; the legal authority for the hearing, and, when appropriate, a statement setting forth a sum certain which shall, unless contested, be the penalty assessed for the violation and a short statement of the reason for seeking the hearing.

(3) The department hereby delegates to the department's hearing officers authority to determine whether there is good cause to vacate, terminate, or modify the notice of non-compliance or subsequent order for cessation and immediate compliance. This authority is in addition to other such delegations to other authorized personnel of the department to whom the secretary from time to time may also designate such review authority.

(4) (a) The department delegates to the chief hearing officer the authority to grant temporary relief from any notice or order of the department issued pursuant to KRS Chapter 350 or the regulations promulgated pursuant thereto. Pending the completion of the investigation and hearings as required by those regulations, the chief hearing officer may grant such temporary relief after making a written finding that such relief is warranted and a detailed statement giving the reasons for granting such relief. The chief hearing officer shall grant or deny such relief expeditiously.

(b) The hearing officer shall grant or deny such temporary relief of a subsequent order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or order to abate and alleviate issued pursuant to KRS 350.130(4) within five (5) days of such a request. The chief hearing officer may grant relief of those orders under such conditions as he may prescribe, only if:

1. A hearing was held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
2. The person requesting such relief shows that there is substantial likelihood that the findings on the merits in a hearing conducted by the department will be favorable to him; and
3. Such relief will not adversely affect the health or safety of the public or cause significant, imminent, environmental harm to land, air, or water resources.

(5) (a) Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing, shall keep order and shall conduct the hearing in accordance with reasonable administrative practice. Unless the parties otherwise agree, the pertinent provisions of the Kentucky Rules of Civil Procedure shall apply to cases before the department, consistent with KRS Chapter 350. The hearing officer shall permit any party to represent himself.

(b) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence, including but not limited to, the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. The department may cause the testimony to be transcribed. When certified as a true and correct copy of the testimony by the department, the transcript shall constitute the official transcript of the evidence.

(d) Except as provided in Section 4 for permit hearings, the hearing officer shall within thirty (30) days of the closing of the hearing record make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within seven (7) days of service of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions. The secretary shall consider the report and recommended order and exceptions and pass upon the case within a reasonable time. The secretary may remand to the hearing officer the matter for further deliberation, adopt the report and recommended order of the hearing officer as the department's final order, or issue his own final order based on the hearing officer's report and the exceptions thereto.

(e) After completion of the hearing and filing of exceptions, the department shall notify the parties in writing, by certified mail, return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension.

(f) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension and no more than two (2) such extensions shall be granted.

(g) A final order of the department shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the department and the facts and law upon which the decision is based.

(h) There shall be no ex-parte communications.

(i) Any person aggrieved by a final order of the department may seek judicial review as set forth in KRS 224.085 and 350.032(2).

(6) Notwithstanding any of the requirements of subsection (1)(d) of this section or of Section 9, the department may allow a bond with sufficient surety to be posted in lieu of the penalty. The bond shall be in such fixed sum as will cover the whole amount of the proposed penalty assessment. Such bond will be posted no later than seven (7) days before the hearing.

Section 4. Informal Conferences. (1) Prior to a formal hearing and at such other times as appropriate pursuant to this section, and upon seven (7) days written notice to all parties, delivered personally or by certified mail return receipt requested, the department may hold a pre-hearing conference or an informal conference. Such conferences may either be presided over by the hearing officer or, where appropriate, may take place between the parties and the authorized assessment officer or settlement officer of the department under the supervision of a hearing officer. Such conferences may be held to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the number of witnesses, and such other matters as will aid in the disposition of the case, including a proposed penalty assessment. Final disposition of the case may be made at such a conference by stipulation, settlement, or agreed order. The parties may hold such additional conferences as may be proper to resolve any issue in dispute.

(2) (a) When the informal conference is to deal with a proposed penalty assessment or with the submission of additional information on a proposed penalty assessment, any person so assessed may contest the proposed penalty assessment at such informal conference without making an escrow payment of the penalty. The informal conference shall be held within sixty (60) days of the request.

(b) The department shall hold an informal conference on the proposed penalty assessment upon written request of the person assessed, if the request is received within thirty (30) days of the receipt of the proposed penalty assessment. Additional reasonable requests for informal conferences may also be entertained by the hearing officer.

(c) The department shall post notice of the conference at the regional office closest to the minesite at least five (5) days before the conference.

(d) The hearing officer may propose to affirm, raise, lower, or vacate the proposed penalty. The hearing officer shall state his reasons therefor in writing and with particularity. However, nothing in this section shall be construed to require the final disposition of the matter except upon agreement of the parties.

(e) If a settlement or agreement is arrived at, the person assessed will be deemed to have waived his rights to further hearings or review of the matter, except as expressly provided in the settlement agreement. The settlement agreement shall set forth the facts and circumstances giving rise to the agreement including a statement on the violation or violations being resolved. The penalty agreed to shall be immediately due and payable to the department pursuant to Section 9.

(3) The hearing officer shall terminate any conference when he determines that the dispute cannot be resolved or that the parties are not diligently pursuing a resolution of the dispute.

Section 5. Permit Issuance or Denial Hearings. Review of original determinations by the department on permit issuance, denial, or imposition of conditions shall be conducted pursuant to this regulation, provided that the department shall issue its final decision within twenty (20) days after the hearing, as set forth in KRS 350.090(1).

Section 6. Orders to Abate and Alleviate. Whenever the secretary or his authorized representative has issued an order to abate and alleviate pursuant to KRS 350.130(4), the department shall conduct a hearing no later than ten (10) days after such an order and give, upon issuance of said order, notice to the parties of the time and place for the hearing. The department may grant a hearing at any time before the expiration of ten (10) days after such an order upon request by a party consistent with the giving of

adequate notice to the parties. The holding of a hearing pursuant to this section shall not operate as a termination or stay of such an order or of the affirmative obligations imposed on any person by the order, unless the hearing officer shall find on the record that the imminent danger has in fact been eliminated or that the order was improper or inappropriate. The fact that the dangerous condition has been abated shall not affect the department's right to assess a civil penalty, but may be considered in mitigation of any amount assessed.

Section 7. Mine Site Hearings. (1) The hearing officer may order any hearing or part of a hearing conducted pursuant to this regulation to be held at or reasonably close to the mine site. The appropriate regional office of the Bureau of Surface Mining Reclamation and Enforcement nearest to the mine site shall be deemed reasonably close unless a closer location is requested and agreed to by the hearing officer in his discretion.

(2) Unless otherwise requested by a party, including an operator, or required by Title 405, Chapters 7 through 24, hearings shall be held in a location established by the department. The department shall give due regard to the convenience of the parties or their representatives or witnesses.

Section 8. Intervention and Consolidation. (1) The hearing officer may grant leave to intervene to any person having an interest which is or may be adversely affected by a hearing and who has not previously become a party pursuant to this regulation. The hearing officer shall grant leave to intervene to any person who had a statutory right to initiate the proceeding in which he wishes to intervene. The hearing officer may grant leave to intervene generally or he may specify the issues upon which leave to intervene is granted. The hearing officer shall consider in setting the terms for intervention the adequacy of representation of the interest of anyone petitioning to intervene which is provided by existing parties to the proceeding, the nature of the issues, and the ability of a petitioner to present relevant evidence and argument.

(2) A petitioner for leave to intervene shall make his request in writing. The request shall set forth the interest of the petitioner and a showing of why his interest is or may be adversely affected.

(3) When hearings involving a common question of law or fact are pending before the department, such hearings are subject to consolidation pursuant to a motion by a party or in the discretion of the hearing officer.

Section 9. Assessment of Civil Penalties. (1) The civil penalties assessed for violations of KRS Chapter 350, Title 405, Chapters 7 through 24 and any condition of a permit shall be pursuant to KRS Chapter 350 and shall be part of the affirmative case presented by the department. The hearing officer shall make a final determination after hearing and based on substantial evidence appearing in the record as a whole whether the violation did in fact occur, the amount of the penalty, and remedial or compliance actions to be taken by a permittee. A continuing violation may be deemed a separate violation for each day for purposes of the total penalty assessed.

(2) The hearing officer shall determine the amount of a civil penalty based exclusively on the record of the hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty assessed in his final written report.

(3) Notwithstanding subsection (2) of this section, the hearing officer shall require a person or permittee in an order, agreed settlement order, consent order, or stipulation, to abate, repair, alleviate and prevent violations of KRS Chapter 350, Title 405, Chapters 7 through 24, and any permit condition, which violations are found to exist on the basis of substantial evidence.

(4) The department shall designate authorized personnel to perform the duties of assessment officers within the Division of Operations and Enforcement. Upon receipt of any notices from the field, such authorized personnel shall forthwith determine, based upon the information available as set forth in the notice or additional information as submitted by the operator, a proposed assessment. The department shall send its notice of the proposed penalty assessment, together with copies of any worksheets, to the person against whom the assessment is proposed within thirty (30) days of the issuance of the notice or order. Resolution of the proposed penalty shall thereupon be pursuant to either the formal or informal conference procedures of this regulation.

(5) (a) If any party seeks judicial review of a final order of the department involving a penalty, the proposed penalty shall continue to be held in escrow until a decision is rendered by the court. If no judicial review is sought, the escrowed funds shall be transferred to the department for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the department or final decision of a reviewing court results in the reduction or elimination of the penalty, the department shall immediately upon receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the department or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the department within thirty (30) days after receipt of the order.

Section 10. The hearing officer shall consider in his determination the seriousness of the violation, the actual or potential damage to the environment, any negligence, recklessness or willful failure leading to the violation, good faith in achieving compliance, and any other relevant factors in the case. A civil penalty may be assessed on a case by case basis for minor violation of KRS Chapter 350, these regulations or any permit condition. A civil penalty shall be assessed against any person or operator adjudicated in violation for serious violations, and pursuant to all subsequent orders for cessation and immediate compliance of orders to abate and alleviate.

Section 11. Penalties. (1) Any person or permittee who violates any of the provisions of KRS Chapter 350, Title 405, Chapters 7 through 24, or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization as required in KRS Chapter 350 or Title 405, Chapters 7 through 24, or who violates any determination or order promulgated pursuant to the provisions of Title 405, Chapters 7 through 24, shall be assessed a civil penalty of not less than $100 nor more than $5,000 for said violation, and an additional civil penalty of not less than $100 nor more than $5,000 for each day during which such violation continues.

(2) (a) Whenever a violation has not been abated during the abatement period set in the notice of noncompliance and order for remedial measures or in an order to abate and alleviate, an additional civil penalty of not less than

$750 shall be assessed for each day during which such failure continues.

(b) The abatement period may be extended consistent with 405 KAR 12:020E if the hearing officer finds as a preliminary matter in pre-hearing conference or other informal conference or in a proceeding for temporary relief pursuant to Section 3(4)(a) and (b) that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the abatement period as set forth in the notice. If the hearing officer so finds that such person will suffer irreparable loss or damage, the period permitted for abatement shall not end until the date the department issues a final order with respect to the violation in question.

(3) Any person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to Title 405, Chapters 7 through 24 shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Such penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Department for Natural Resources and Environmental Protection by the department's office of general counsel, or upon the secretary's request, by the attorney general.

Section 12. Costs and Expenses.

(1) (a) Any person who was a party before the department may file a petition for award of costs and expenses including attorney's fees reasonably incurred as a result of that person's participation in an administrative proceeding which led to a final order of the department.

(b) The petition for such an award must be filed with the hearing officer within twenty (20) days of a final order being entered by the department in that proceeding. Failure to file a timely petition shall result in a waiver of the right to such an award.

(2) The petition filed pursuant to subsection (1) of this section shall include the name of the person from whom costs and expenses are sought, an affidavit setting forth in detail all costs and expenses reasonably incurred for, or in connection with the person's participation in the proceeding, all receipts or other evidence of such costs and expenses. The petition shall also include, when attorney's fees are claimed, evidence concerning the hours expended on the case; the customary commercial rate of payment for such services in the area; and the experience, reputation, and ability of the individual or individuals performing the services.

(3) Any person served with a copy of the petition shall have twenty (20) days from service of the petition to file an answer.

(4) Appropriate awards for costs and expenses may be assessed in the sound discretion of the hearing officer to any person from the permittee or the department, to the permittee from any person or the department, to the department from any person or permittee. The hearing officer shall consider the traditional practices prevailing in the Commonwealth for such awards, whether the person or permittee made a substantial contribution to a full and fair determination of the issues. The hearing officer shall divest an award against any persons, permittee, or the department if substantial evidence demonstrates that a hearing was held or any motion or order was issued in bad faith or for purposes of harassing or embarrassing any person, permittee, or the department.

Section 13. Judicial Review. The commencement of proceedings for judicial review of any determination of the department shall not operate as a stay of the final order of the department, unless specifically ordered by the court.

Section 14. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:100E. Notice of citizen suits.

RELATES TO: KRS 350.250
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.250, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation pertains to suits brought by citizens pursuant to KRS 350.250 and delineates the procedural requirements of notice to the department, including notice, service of notice, sufficient pleadings, necessary allegations, specific allegations to be contained on the notice, and identifying information about the person sending the notice.

Section 1. Notice of Citizen Suits. (1) A person who intends to initiate a civil action on his or her own behalf under KRS 350.250 or other statutory provision authorizing such an action shall give notice of intent to do so, in accordance with this regulation.

(2) Notice shall be given by certified mail to the secretary in all cases and to the attorney general as provided in CR 4.04(6).

(3) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of KRS Chapter 350 or any regulation, order, or permit issued under KRS Chapter 350.

(4) Service of notice under this regulation is complete upon mailing to the last known address of the person being notified.

(5) A person giving notice regarding an alleged violation shall state, to the extent known:

(a) Sufficient information to identify the provision of KRS Chapter 350, regulation, order, or permit allegedly violated;

(b) The act or omission alleged to constitute a violation;
(c) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;
(d) The date, time, and location of the alleged violation;
(e) The name, address, and telephone number of the person giving notice; and
(f) The name, address, and telephone number of legal counsel, if any, of the person giving notice;
(6) A person giving notice of an alleged failure by the secretary to perform a mandatory act or duty under KRS Chapter 350 shall state, to the extent known:
(a) The provision of KRS Chapter 350 containing the mandatory act or duty allegedly not performed;
(b) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under KRS Chapter 350;
(c) The name, address, and telephone number of the person giving notice; and
(d) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:110E. Petitions for rulemaking.

RELATES TO: KRS 350.255
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.255, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the department to include, as part of its permanent regulatory program for surface coal mining and reclamation operations, certain procedural regulations relating to due process hearings and rulemaking. This regulation specifies how any person may petition the secretary of the department to initiate rulemaking procedures. This regulation sets forth petition requirements, time limits, and other aspects of the rulemaking petition process.

Section 1. Petitions for Rulemaking.
(1) (a) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any regulation promulgated pursuant to KRS Chapter 350.
(b) The person petitioning for a rulemaking shall make his petition in writing and shall set forth the facts, technical justification and law which support the petition. The petitioner shall give due regard to the department's duties pursuant to KRS Chapter 350.
(c) The department shall hold a public hearing on the petition if the petition so requests or if the department is otherwise advised that a hearing should be held. The department will hold the public hearing within thirty (30) days of the filing of the petition.
(d) The secretary shall render a final order granting or denying the petition within thirty (30) days after the hearing. The final order shall grant or deny the petition on the grounds that there is or is not a reasonable basis for the petitioned rule change or that such change is required or prohibited by law. The order shall be in writing and shall explicitly set forth the reasons for the decision.
(e) If a petition is granted proposing the issuance, amendment or repeal of regulations which were the subject of the petition, the secretary shall initiate a rulemaking proceeding pursuant to KRS Chapter 13 within thirty (30) days of the final order granting the petition.
(f) Any participant in the petition proceedings may seek review of an order of the secretary denying all or any portion of the action requested in a petition in the Franklin County Circuit Court.
(2) The secretary may, on a case by case basis, suspend any regulation when the secretary determines that such regulation (or such similar regulation promulgated by an agency of the federal government for which the department is under a duty by law to have a consistent regulation in point) has been held by a court of competent jurisdiction to be unlawful, unconstitutional, or otherwise defective. In making a decision to suspend a regulation, the secretary shall consider the duties of the department to implement a permanent regulatory program, its general statutory authority and duties, and the requirements as set forth by law as to the stringency of the department's regulatory program. In conjunction with a determination under this section, the secretary may, on his own motion, initiate a proceeding under Section 1, or, other appropriate actions as permitted by law.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 8:010E. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules

and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct such operations. The regulation specifies when permits are required, requirements for continued operation under interim permits, application deadlines, requirements for permanent program permits, fees, verification of permits, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit application, criteria for permit approval or denial and relevant actions, term of the permit, condition of the permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. The provisions of this regulation shall apply to all permits and all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Permit Requirements. (1) Permits required. Except as provided for in subsection (2) of this section, on and after eight (8) months from the date on which the Commonwealth's permanent regulatory program is approved by the Secretary of the Interior, no person shall engage in or carry out surface coal mining and reclamation operations on lands within the Commonwealth of Kentucky, unless that person has first obtained a valid permit issued by the department under Title 405, Chapters 7 through 24.

(2) Continued operation under interim permits. A person conducting surface coal mining operations under a permit issued or amended by the department in accordance with the requirements of the interim regulatory program under KRS Chapter 350, may conduct these operations beyond the period prescribed in subsection (1) of this section if:

(a) Application for a permanent program permit has been made to the department in accordance with the provisions of KRS Chapter 350 and Title 405, Chapters 7 through 24, within the time specified in Section 3(1)(a).

(b) The department has not yet rendered a decision to issue or deny a permit with respect to such application; and

(c) The operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of KRS Chapter 350 and all applicable statutes and regulations.

(3) The requirements of the interim program regulations under which the permit under subsection (2) of this section was originally issued, and as amended prior to approval of the Commonwealth's regulatory program, shall constitute terms and conditions of the permit which shall remain applicable to the permit unless superseded by more stringent requirements of the permanent program. Such terms and conditions shall remain in effect notwithstanding the subsequent repeal of the interim regulations by adoption of permanent regulations.

(4) Compliance with permits. Any person conducting surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the provisions of the plans and other documents submitted as part of the application and approved by the department, and the requirements of KRS Chapter 350, and Title 405, Chapters 7 through 24.

Section 3. Permit Application Filing Deadlines. (1) Filing deadlines for persons holding valid interim permits:

(a) Following approval of the Commonwealth's permanent regulatory program by the Secretary of the Interior, and regardless of litigation contesting that approval, each person who holds a valid interim permit to conduct surface coal mining and reclamation operations, and who intends to conduct such operations after the expiration of eight (8) months from the date of program approval, shall not later than two (2) months after such approval file an application for a permanent program permit for such operations in such manner as the department may determine.

(b) Applications which are not filed within the two (2) months period required by paragraph (a) of this subsection shall, with regard to the time period in which the department shall be required to act as provided in Section 16(1), be treated as applications submitted in accordance with subsection (2) of this section.

(c) Persons who hold valid interim permits to conduct surface coal mining and reclamation operations, and who do not intend to extract coal in such operations after the expiration of the eight (8) months after program approval, are not required to submit applications for permanent program permits for such operations. On such operations the term of the valid interim permits shall expire at the end of the eight (8) months period after program approval, irrespective of the date of issuance or renewal of the interim permit.

(d) Extension of interim permits. The term of a valid interim permit which would expire and require renewal between May 1, 1980, and eight (8) months after the program approval date shall be extended to the end of the eight (8) months period. Such permittees who intend to continue operations beyond the eight (8) months period shall submit applications for permanent program permits pursuant to paragraph (a) of this subsection.

(2) Filing deadlines subsequent to transition from interim program to permanent program:

(a) New operations permitted after program approval date. Following the approval of the Commonwealth's permanent regulatory program by the Secretary of the Department of the Interior, and regardless of litigation contesting that approval, each person who conducts or intends to conduct new surface coal mining and reclamation operations shall file a complete application for a permit for those operations which shall comply fully with all applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, and shall not begin such operations until the permit is granted.

(b) Renewal of valid permits. An application for renewal of a permit under Section 21(1) and (2) shall be filed with the department at least 120 days before the expiration of the permit.

(c) Revisions of permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until such revision is approved by the department. The department shall act upon the application for revision within the time specified in Section 20. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permits. Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the department not later than thirty (30) days after that succession is approved by the department.

Section 4. Preliminary requirements. A person desiring a permit shall submit to the department a preliminary application of the form and content prescribed by the depart-

ment. The preliminary application shall contain pertinent information including a USGS 7½-minute topographic map and, if necessary to show sufficient detail, an enlargement thereof of a scale not to exceed one (1) inch equals 400 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including but not limited to locations of the coal seam(s) to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the department. Personnel of the department shall conduct, within twenty-one (21) days after filing, an onsite investigation of the area with the person or his representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications.

(1) (a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the department.

(b) The application shall be on forms provided by the department, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the department with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the department may require.

(c) The application shall be complete with respect to all information required by this Title and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030E; for underground mining activities, all the information required under 405 KAR 8:040E; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050E. No application is complete unless all design plans for the permit area are in final, detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the department.

(3) All technical data submitted in the application shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed such data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided to the applicant, information which is made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5) (a) The applicant shall designate in the permit application either himself or such other person who will serve as agent for service of notices and orders. Such designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. Such person shall continue as agent for service of process until such time as written revision of the permit is made to designate another person as agent.

(b) The applicant may designate in the permit application, persons authorized by the applicant to submit modifications to the application to the department. If such designation is not made in the application, the department shall accept such modifications only from the applicant.

(6) General requirements for maps and plans:

(a) 1. If any of the information marked on the preliminary map required under Section 4 has changed, the application shall contain an updated USGS 7½-minute topographic map marked as required in Section 4.

2. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale between 400 and 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. The map required by 405 KAR 8:030E, Section 23(1)(a) or 405 KAR 8:040E, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS 7½- minute (1:24,000) topographic map.

3. Maps shall be prepared by or under the direction of and certified by, where applicable, a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as specified in subsection (7) of this section. The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested.

4. All engineering design plans submitted with applications shall be prepared by, or under the direction of, a qualified registered professional engineer and shall bear the engineer's seal and signature as required by KRS Chapter 322.

(b) Maps and plans submitted with the application shall clearly identify surface coal mining operations which have been or will be conducted within the permit area in the following time periods:

1. Prior to May 3, 1978;

2. Between May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption in accordance with 405 KAR 1:030 or 405 KAR 3:030) and the effective date of the Commonwealth's permanent regulatory program;

3. Between the effective date of the Commonwealth's permanent regulatory program and the date of the permit application;

4. After issuance of the permit.

(7) Certifications by professional engineers. All certifications required to be made by professional engineers shall read as follows: "I, the undersigned, hereby certify that the information or documentation contained herein is correct, and to the best of my knowledge and belief, includes all the information required by the applicable laws and regulations of this state." The certification shall be signed and notarized. The department may reject the document as incomplete if its accuracy is not so attested.

Section 6. Permit Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the department. Such fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit. The required fee for an application submitted by a small operator as defined by KRS 350.450(4)(d) may be paid in equal installments during the term of the permit with the first installment to accompany the application pursuant to subsection (3) of this section. The applicant shall include in the application a proposed schedule for such installment payments, which schedule shall be subject to approval and revision by the department. If any scheduled installment payment is not timely made within

thirty (30) days of the date the installment is due and payable according to the schedule approved by the department, the permit shall become suspended upon such date.

(2) The amount of such fee shall be $250 plus fifty dollars ($50) for each acre or fraction thereof of the area of land to be affected under the permit.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless such fee has been paid.

Section 7. Verification of Application. Applications for permits shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations are to be located.

(2) (a) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the first advertisement being published as contemporaneously as possible with the applicant's receipt of written notice from the department that the application is deemed complete.

(b) The fourth advertisement shall clearly state that it is the fourth and final advertisement, and that written objections to the application may be submitted to the department until thirty (30) days after the date of the fourth and final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the department proof of publication of the required four (4) notices, satisfactory to the department, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisments.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the department.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7½-minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, indicate the north point and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section; and

(d) The name and address of the department to which written comments, objections, or requests for informal conferences on the application may be submitted under Sections 9, 10, and 11.

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

(f) The proposed postmining land use if different than the premining land use.

(g) The dates of the current and all previous advertisements with respect to the application.

(6) Upon receipt of a complete application for a permit, the department shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9.

(7) The written notifications shall be sent to:

(a) Federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;

(b) Governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;

(c) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(d) The federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

(8) (a) The applicant shall make a full copy of the complete application for a permit and any subsequent proposed revisions available for the public to inspect and copy. This shall be done by filing an additional copy of the complete application at the appropriate regional office of the department where the mining is proposed to occur.

(b) The department shall make the copy of the complete application available for public inspection and copying during all normal working hours, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments on Permit Applications: (1) Written comments on permit applications may be submitted to the department by the public entities to whom notification is provided under Section 8(6) and (7) with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments shall be submitted to the department in the manner prescribed by the department, and shall be submitted within thirty (30) calendar days of receipt of written notification from the department pursuant to Section 8(6) and (7).

(3) The department shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under Section 8(8). A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local govern-

ment agency or authority to be notified under Section 8 shall have the right to file written objections to an initial or revised application for a permit with the department, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1).

(2) The department shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy for public inspection at the public office where the applicant filed a copy of the application for permit under Section 8(8).

Section 11. Informal Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the issuance of the permit, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 may, in writing, request that the department hold an informal conference on any application for a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requestor at the conference;

(b) State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations;

(c) Be filed with the department not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1).

(2) Except as provided in subsection (3) of this section, if an informal conference is requested in accordance with subsection (1) of this section, the department shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, it shall be held in the locality of the proposed mining.

(b) The date, time, and location of the informal conference shall be advertised by the department in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requestor in a reasonable time prior to the conference, the department may arrange with the applicant to grant parties to the conference access to the permit area for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090E shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the department, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Title 405, Chapter 10.

(3) If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their requests, the informal conference need not be held.

(4) Informal conferences held in accordance with this section may be used by the department as the public hearing required under 405 KAR 24:040E on proposed uses or relocation of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Department. (1) Information contained in permit applications on file with the department shall be open, upon written request, for public inspection and copying at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884.

(a) Information pertaining to coal seams, test borings, and core samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected; and

(b) Information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(2) The department shall provide for procedures to maintain information required to be kept confidential under subsection (1) of this section separately from other portions of the permit application. This information shall be clearly identified as confidential by the applicant and submitted separately from other portions of the application.

Section 13. Department Review of Permit Applications. (1) (a) Initial completeness determination. Within twenty-one (21) days of initial receipt of the application, the department shall provide written notification to the applicant as to the initial completeness of the application. An application which is determined to be incomplete shall be returned to the applicant with the written notification of the determination.

1. A determination by the department that the application is initially complete shall be construed to mean that the application contains the major elements required by KRS Chapter 350 and Title 405, Chapters 7 through 24 which are necessary to allow meaningful review of the application by the department. An application shall not be deemed initially complete if one or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination of initial completeness shall not be construed to mean that the application is complete in every detail, nor shall it be construed to mean that any aspect of the application is technically sufficient or approvable.

2. Small operator applications. The initial completeness determination for an application submitted by a small operator as defined by KRS 350.450(4)(d) shall be made within ten (10) working days after initial receipt of the application by the department. If the application is determined to be incomplete, the department shall not return the incomplete application to the applicant, but shall notify the applicant, return receipt requested, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) departmental working days after the applicant's receipt of the initial notice of incompleteness. If after such ten (10) working days, the department determines that the application is still incomplete, the department shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) Processing of complete application. Within the time periods set forth in Section 16, the department shall either:

1. Approve the application and issue a permit to the applicant, or deny the application; or

2. Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the department for consideration of the application.

(2) If the department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Title 405, Chapter 10.

(3) If the department determines from either the lists submitted as part of the application under 405 KAR 8:030E, Section 3(3), or 405 KAR 8:040E, Section 3(3), or from other available information, that any surface coal mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection, or of any provision of SMCRA (PL 95-87) or KRS Chapter 350, and regulations promulgated pursuant thereto, the department shall require the applicant, before the issuance of the permit, to either:

(a) Submit to the department proof which is satisfactory to the department and other agencies which have jurisdiction over such violation, that the violation:

1. Has been corrected; or
2. Is in the process of being corrected; or

(b) Establish to the department that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation.

(4) Before any final determination by the department that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of SMCRA (PL 95-87) or KRS Chapter 350 of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of SMCRA (PL 95-87) or KRS Chapter 350, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090E. Such hearing shall be conducted pursuant to 405 KAR 7:090E.

Section 14. Criteria for Permit Approval or Denial. No permit or revision for an application shall be approved, unless the application affirmatively demonstrates and the department finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

(1) The permit application is accurate and complete and that all requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 have been complied with.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance has been made by the department and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030E; and

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030E, unless the applicant demonstrates that, before January 4, 1977, he or she has made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; and

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040E, Section 2(1), (2) or (3); and

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040E, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040E, Section 2(5).

(5) The proposed operations will not adversely affect any publicly-owned parks or places included in the National Register of Historic Places, except as provided for in 405 KAR 24:040E, Section 2(4).

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the department the documentation required under 405 KAR 8:030E, Section 4(2) or 405 KAR 8:040E, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(3)(a); or

(b) Made the demonstration required by Section 13(3)(b).

(8) The applicant has submitted proof that all reclamation fees required by 30 CFR 870 have been paid.

(9) The applicant or the operator, if other than the applicant, does not control or has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA (PL 95-87) or KRS Chapter 350 of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of SMCRA (PL 95-87) or KRS Chapter 350.

(10) Surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.

(11) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under Title 405, Chapter 10 prior to the issuance of the permit.

(12) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050E, Section 3.

(13) The proposed postmining land use of the permit area has been approved by the department in accordance with the requirements of 405 KAR 16:210E or 405 KAR 18:220E.

(14) The department has made all specific approvals required under Title 405, Chapters 16 through 20.

(15) The department has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC Sec. 1531 et seq.).

Section 15. Criteria for Permit Approval or Denial

Regarding Existing Structures. No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the department finds, in writing, on the basis of information set forth in the complete application, that the provisions of 405 KAR 7:040E, Section 5, are met.

Section 16. Permit Approval or Denial Actions. (1) The department shall take action on permit applications within the following time periods as appropriate:

(a) Except as provided for in paragraph (c) of this subsection and Section 13(1)(b)2, a complete application submitted to the department under Section 3(1)(a) shall be processed by the department so that an application is approved or denied within eight (8) months after the date of approval of the Commonwealth's permanent regulatory program, unless the Commonwealth or the department is specifically enjoined from implementing a permanent regulatory program.

(b) Except as provided for in paragraph (c) of this subsection, a complete application submitted to the department after the time required in Section 3(1)(a) and in accordance with Section 3(2) shall be processed by the department, so that an application is approved or denied within sixty-five (65) working days after the notice of completeness under Section 13(1)(a), except that periods of temporary withdrawal under Section 13(1)(b)2 shall not be counted against the sixty-five (65) working day period available to the department.

(c) In the event that the notice, hearing, and conference procedures as mandated by KRS Chapter 350 and this Title prevent a decision from being issued within the time periods specified in paragraphs (a) and (b) of this subsection, the department shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) If an informal conference has been held under Section 11, the department shall provide its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(3) If no such informal conference has been held, the department shall provide its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(4) The department shall:

(a) Provide a copy of its decision to:

1. Each person and government official who filed a written objection or comment with respect to the application; and

2. The Regional Director of the Office of Surface Mining Reclamation and Enforcement together with a copy of any permit issued; and

(b) Publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located.

(5) Within ten (10) days after the issuance of a permit, including the filing of the performance bond or other equivalent guarantee which complies with Title 405 Chapter 10, the department shall notify the city or county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the department only if:

(a) The application is full and complete for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(2) (a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The department may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee, or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permitee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the department under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the department, in accordance with Section 19, 405 KAR 8:050E, Sections 5, 6, and 7, and Title 405, Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the department, to accept a permit issued by the department, or to begin operations pursuant to a permit issued by the department, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the department pursuant to this chapter whether or not such conditions are set forth in the permit.

(1) General:

(a) The permittee shall comply fully with all terms and conditions of the permit; and

(b) Except to the extent that the department otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under 405 KAR 8:030E or 405 KAR 8:040E, and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to Title 405, Chapter 10.

(2) Right of entry:

(a) The permitee shall allow the authorized representatives of the Secretary of the Interior, including but not limited to, inspectors and fee compliance officers, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to:

1. Have the rights of entry provided for in 405 KAR 12:010E, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in

response to an alleged violation reported to the department by the private person.

(b) The permittee shall allow the authorized representatives of the department to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030E.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necesary to comply; and

3. Warning, as soon as possible after learning of such failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Title 405, Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilitzing any methods specified in the permit by the department in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and Title 405, Chapters 16 through 20, in accordance with the provisions of KRS Chapter 350, Section 14(13), and Title 405, Chapters 16 through 20.

Section 19. Department Review of Outstanding Permits.

(1) (a) The department shall review each permit issued and outstanding under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060E and 405 KAR 8:050E, Sections 4, 6, and 7

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent that the permit midterm or every five (5) years, whichever is more frequent.

(2) After this review, the department may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and Title 405, Chapters 7 through 24.

(3) Copies of the decision of the department shall be sent to the permittee.

(4) Any order of the department requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090E.

Section 20. Permit Revisions. (1) A revision to a permit shall be obtained:

(a) For changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a departure from the method of conduct of mining or reclamation operations contemplated by the original permit.

(b) When required by an order issued under Section 19.

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under Title 405, Chapters 7 through 24.

(2) Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 405 KAR 8:030E, 405 KAR 8:040E, and 405 KAR 8:050E, or in the conditions of the original permit, shall be deemed a major revision and shall be subject to the requirements of this regulation, Sections 8 through 18 and 23. All other revisions shall be deemed minor revisions.

(3) The department shall approve or disapprove the complete application for revision, in accordance with the requirements of this regulation within:

(a) Fifteen (15) working days for minor revisions; or

(b) For major revisions, the time set forth in Section 16.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this section.

Section 21. Permit Renewals. (1) General requirements for renewal:

(a) Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with subsections (2) and (4) of this section. Successive renewal shall be available only for those areas which were specifically approved by the department on the application for the existing permit as within the boundaries of the permit.

(b) Except for incidental boundary revisions, permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit.

(2) Complete applications for renewal:

(a) Contents of renewal applications. Complete applications for renewals of a permit shall be made within the time prescribed by Section 3(2)(b). Renewal applications shall be in a form and with content as required by the department and in accordance with this section, and shall include at a minimum:

1. A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;

2. A copy of the newspaper notice and proof of publication of same under Section 8; and

3. Evidence that liability insurance under 405 KAR 10:030E, Section 4, will be provided by the applicant for the proposed period of renewal.

(b) Processing and review of renewal applications:

1. Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16, except that the time for the initial completeness determination shall be ten (10) days.

2. Before finally acting to grant the permit renewal, the department shall require any additional performance bond needed by the permittee to comply with the requirements of subsection (4)(a)4 of this section, to be filed with the department.

3. Fees. If the renewal application proposes incidental boundary revisions which would increase the acreage in the

permit, an additional acreage fee of fifty (50) dollars per acre, or fraction thereof, shall be included with the application.

(3) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17.

(4) Approval or denial of renewal applications.

(a) The department shall, upon the basis of a complete application for renewal and completion of all procedures required under subsections (2) and (3) of this section, issue a renewal of a permit, unless it is established and written findings by the department are made that:

1. The terms and conditions of the existing permit are not being satisfactorily met; or

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and Title 405, Chapters 7 through 24; or

3. The requested renewal substantially jeopardizes the operator's continuing responsibility to comply with KRS Chapter 350 and Title 405, Chapters 7 through 24 on existing permit areas; or

4. The operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the department might require pursuant to Title 405, Chapter 10; or

5. Any additional revised or updated information required by the department has not been provided by the applicant.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The department shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

(d) Any person having an interest which is or may be adversely affected by the decision of the department shall have the right to adminnistrative and judicial review set forth in 405 KAR 7:090E.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) Approval required. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this chapter shall be made without the prior written approval of the department, in accordance with this section.

(2) Obtaining approval:

(a) Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued under this chapter shall, prior to the date of such transfer, assignment or sale:

1. Obtain performance bond coverage for the permit area by: obtaining transfer of the original bond; providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee; and

2. Provide the department with an application for approval of such proposed transfer, assignment, or sale, including: the name and address of the existing permittee; the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent; for surface mining activities that same information as is required by 405 KAR 8:030E, Sections 2, 3, 4, 5(3), 7, and 8, for applications for new permits for those activities; or for underground mining activities, the same information as is required by 405 KAR 8:040E, Sections 2, 3, 4, 5(3), 7, and 8, for applications for new permits for those activities.

3. Obtain the written approval of the department for transfer, assignment, or sale of rights, according to paragraph (c) of this subsection.

(b) 1. The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application 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 operations are located, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under subparagraph 2 of this paragraph.

2. Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state or federal government agency may submit written comments on the application for approval to the department, within the time required by the department.

(c) The department may, upon the basis of the applicant's compliance with the requirements of paragraphs (a) and (b) of this subsection, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:

1. The person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in Sections 14 and 15, and 405 KAR 8:050E, and the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

2. The applicant has, in accordance with paragraph (a)1 of this subsection, submitted a performance bond or other guarantee as required by Title 405, Chapter 10 and at least equivalent to the bond or other guarantee of the original permittee; and

3. The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this chapter as required in subsection (3) of this section.

(3) Requirements for new permits for persons succeeding to rights granted under a permit.

(a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

(b) Pursuant to subsection (2)(c)3 of this section, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall:

1. Make application for a new permit under this chapter, if the change involves conducting operations outside the original permit area; or

2. Make application for a revised permit under Section 20.

Section 23. Administrative and Judicial Review. (1) Within thirty (30) days after the applicant or permittee is notified of the final decision of the department concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the

reasons for the final decision in accordance with 405 KAR 7:090E.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in 405 KAR 7:090E if:

(a) The applicant or person is aggrieved by the decision of the department in an administrative hearing conducted pursuant to subsection (1) of this section; or

(b) The department fails to act within time limits specified in KRS Chapter 350 or Title 405, Chapters 7 through 24.

Section 24. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 8:020E. Coal exploration.

RELATES TO: KRS 350.057, 350.610
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.057, 350.060, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to exploration operations. This regulation specifies when notice to the department is required and when prior written approval is needed from the department. This regulation further specifies the application process, information requirements, and hearing and compliance requirements.

Section 1. Exploration of Less Than 250 Tons. (1) Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed in the area to be explored shall, at least twenty-one (21) days prior to conducting the exploration, file with the department 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;

(f) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities; and

(g) A statement as to whether the proposed coal exploration will be conducted within an area which has been designated unsuitable for mining pursuant to Title 405, Chapter 24.

(3) The department shall, in accordance with Section 3, place such notices on public file and make them available for public inspection and copying at the appropriate regional office of the bureau.

(4) Any person who conducts coal exploration activities pursuant to this section which substantially disturb the natural land surface shall comply with 405 KAR 20:010E.

(5) If the department determines that the area of proposed coal exploration will be within an area designated unsuitable for mining pursuant to Title 405, Chapter 24, the exploration shall be subject to approval by the department. The department shall, within fifteen (15) days of receipt of the applicant's written notice filed pursuant to subsection (1) of this section, provide written notice to the applicant that either:

(a) The exploration is approved; or

(b) The exploration threatens to interfere with the values for which the area has been designated unsuitable for mining, and therefore is not approved until the applicant has submitted to the department an acceptable plan to conduct the exploration so as not to interfere with such values; or

(c) The exploration is incompatible with the values for which the area was designated unsuitable for mining, and therefore is not approved.

(6) Any person whose interests are or may be adversely affected by any actions of the department pursuant to subsection (5) of this section shall have recourse to administrative and judicial review pursuant to 405 KAR 7:090E.

Section 2. Exploration of More Than 250 Tons. (1) General. Any person who intends to conduct coal exploration in which more than 250 tons of coal are removed in the area to be explored, shall, prior to conducting the exploration, obtain the written approval of the department, in accordance with this section.

(2) Contents of application for approval. Each application for approval, in the number and form required by the department, 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 USC 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 coal 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 coal 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 20:010E;

6. A statement as to whether the proposed coal exploration will be conducted within an area which has been designated unsuitable for mining pursuant to Title 405, Chapter 24. If so, the application shall include a description of the measures to be taken so as not to interfere with the values for which the area was designated unsuitable.

(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 (7½) 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 coal 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 USC 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 department 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 department 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 department 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 department written comments on the complete application within thirty (30) days of the posting 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 coal exploration operations, the department 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 department that the application is complete shall not be construed to mean that the application is technically sufficient.

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

(c) The department shall approve a complete application filed in accordance with this 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 Chapter 350, 405 KAR 20:010E, and this 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 USC 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 department and the agency with management responsibility over such areas; and

4. If located within an area designated unsuitable for mining, will not be incompatible with the values for which the area was designated unsuitable for mining.

(5) Terms of approval. Each approval issued by the department shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with KRS Chapter 350, this regulation, and 405 KAR 20:010E.

(6) Notice and hearing:

(a) The department shall notify the applicant and the appropriate local government officials, 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. The department shall provide public notice of approval or disapproval of each application by publication of notice 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 proposed exploration operations are located.

(b) Any person with interests which are or may be adversely affected by a decision of the department pursuant to paragraph (a) of this subsection, shall have the opportunity for administrative and judicial review as are set forth in 405 KAR 7:090E.

Section 3. Public Availability of Information. (1) Except as provided in subsection (2) of this section, all information submitted to the department under this regulation shall be made readily available for public inspection and copying pursuant to Kentucky open record statutes KRS 61.870 to 61.884, at the appropriate Regional Office of the Bureau of Surface Mining Reclamation and Enforcement.

(2) (a) The department shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the department determines that the information is confidential.

(b) The department shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(c) Information requested to be held as confidential under this subsection shall not be made publicly available until after notice and opportunity to be heard is afforded persons seeking or opposing disclosure of the information.

Section 4. Compliance. All coal exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of KRS Chapter 350, this regulation, and 405 KAR 20:010E, and any conditions on approval for exploration and reclamation imposed by the department.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 8:030E. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010E.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the property to be mined;

(c) The holders of record of any leasehold interest in the property to be mined;

(d) Any purchaser of record, under a real estate contract, of the property to be mined;

(e) The operator, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section is a business entity other than a single proprietor, the application shall contain the names and addresses or their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorportion from the Secretary of State; and if a foreign corporation, a certified copy of the certificate of authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant after December 31, 1970 and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and MSHA identification number for the mine and all sections, if any.

(7) Each application shall contain proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

Section 3. Compliance Information. (1) Each application shall contain a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;

(d) The current status of the proceedings and of the violation notice; and

(e) The actions, if any, taken by the applicant to abate the violation.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the department the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Title 405, Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010E, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040E, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010E, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030E, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the department where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010E, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the department and made a part of the complete application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010E, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include, when specifically required in this regulation, descriptions of the existing environmental resources within the proposed permit area and adjacent areas which may be affected by the proposed surface mining activities. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with

reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed on the National Register of Historic Places and known archaeological features within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historical, and cultural preservation agencies.

Section 12. General Requirements for Geology and Hydrology. (1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16.

(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the department, to the extent that this data is available from an appropriate federal or state agency.

(b) If this information is not available from such agencies, the applicant may gather and submit this information to the department as part of the permit application.

(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

Section 13. Geology Information. (1) The geology description shall include a general statement of the geology within the proposed permit area, and adjacent area down to and including the first aquifer which may be affected below the lowest coal seam to be mined.

(2) (a) Geologic information from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined, to provide the following data in the description:

1. Location of subsurface water, if encountered.
2. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;
3. Physical properties of each stratum within the overburden;
4. Chemical analyses of each stratum within the overburden down to and including the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials; and
5. Analyses of the coal seam, including, but not limited to, an analysis of the total sulfur and pyrite sulfur content.

(b) If required by the department, geologic information shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

(c) An applicant may request that the requirement for all or part of the geologic information required under paragraph (a) of this subsection be waived by the department. The waiver may be granted only if the department makes a written determination that the information is unnecessary for the application being considered.

Section 14. Ground Water Information. (1) The application shall contain a description of the ground water hydrology for the proposed permit area and adjacent area, including, at a minimum:

(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;

(b) The lithology and thickness of the aquifers;

(c) Known uses of the water in the aquifers and water table; and

(d) The quality of subsurface water, if encountered.

(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the department.

Section 15. Surface Water Information. (1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the location of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify the seasonal variations in water quantity and quality within the proposed permit area and adjacent areas.

(2) Surface water information for the proposed permit area shall include:

(a) Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations; and

(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas sufficient to identify seasonal variations, showing:

1. Total dissolved solids in milligrams per liter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standard units;
6. Total iron in milligrams per liter;
7. Dissolved iron in milligrams per liter;
8. Total manganese in milligrams per liter; and
9. Such other information as the department determines is relevant.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent areas for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the department, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The department may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050E, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the department, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include such information as is available in the form of published data or data otherwise available from state and federal fish and wildlife management, conservation or regulatory agencies on fish and wildlife and their habitats within the proposed permit area and the portions of the adjacent areas where effects upon such resources may reasonably be expected to occur.

(2) Prior to making application, the applicant may contact the department to determine what fish and wildlife resources information is available for the proposed permit area and adjacent areas. The department, in such consultation as the department deems necessary with the appropriate state and federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish and wildlife or their habitats, shall identify such information as is available and notify the applicant where such information may be obtained.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(a) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050E, Section 3 for such designated land.

(b) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the department, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the department.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the department.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the department to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, 38, 405 KAR 8:010E, Section 5(6), and 405 KAR 7:040E, Section 7.

(4) Maps, drawings, and cross sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the department.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is approved as necessary for postmining land use as specified in 405 KAR 16:210E):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
4. Each coal storage, cleaning and load area;
5. Each topsoil, spoil, coal waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34, and fill area for the disposal of excess spoil in accordance with Section 27.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190E;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050E;

(e) A plan for revegetation as required in 405 KAR 16:200E, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200E, Section 6; a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KR 16:010E, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150E, Section 1 and 405 KAR 16:190E, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040E; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of Title 405, Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the department to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of 405 KAR 16:120E.

(2) The blasting plan shall also include:

(a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;

(b) Description of procedures and plans for recording and retention of information of the following during blasting:

1. Drilling patterns, including size, number, depths, and spacing of holes;
2. Charge and stemming of holes;
3. Types of detonators and detonation controls; and
4. Sequence and timing of firing holes.

(c) Description of blasting warning and site access control equipment and procedures;

(d) Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used in lieu of the formula provided in 405 KAR 16:120E;

(e) Description of plans for recording and reporting to the department the results of preblasting surveys, if required; and

(f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule may be needed under 405 KAR 16:120E, Section 4(2).

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130E. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An estimate of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130E, Section 1(9), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the department is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220E.

(c) A description of measures to be taken to obtain approval of the department for alteration or relocation of a natural drainageway under 405 KAR 16:220E.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the department under 405 KAR 16:220E.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010E, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the department and other agencies as required in 405 KAR 24:040E, Section 2(4).

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040E, Section 2(6), the applicant seeks to have the department approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each plan shall contain a description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with Title 405, Chapter 16, to ensure the protection of:

(a) The quality of surface and ground water systems, both within the proposed permit area and adjacent areas, from adverse effects of the proposed surface mining activities;

(b) The rights of present users of surface and ground water; and

(c) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with Section 15 and 405 KAR 16:060E, Section 8, where the protection of quantity cannot be ensured.

(2) The description shall include:

(a) A plan for the control, in accordance with Title 405, Chapter 16, of surface and ground water drainage into, through, and out of the proposed permit area;

(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, of surface and ground water drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 16:070E, according to the more stringent of the following:

1. Title 405, Chapters 16 through 20; or
2. Other applicable state and federal laws.

(c) A plan for the restoration of the approximate recharge capacity of the permit area in accordance with 405 KAR 16:060E, Section 6.

(d) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 16:110E.

(3) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including concentrations of dissolved solids, suspended solids, total iron, pH, acidity, alkalinity, total manganese, and other parameters required by the department.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be con-

structed within the proposed permit area to achieve compliance with 405 KAR 16:080E.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(a) Each plan shall:

1. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

2. Contain a description, map, and appropriate cross sections and drawings of the structure and its location;

3. Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 16;

4. Contain an estimate of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(b) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the MSHA, 30 CFR 77.216(a), shall:

1. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

2. Include any geotechnical investigation, design, and construction requirements for the structure;

3. Describe the operation and maintenance requirements for each structure; and

4. Describe the timetable and plans to remove each structure, if appropriate.

(c) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) and all coal processing waste dams and embankments covered by 405 KAR 16:160E, whether or not such structures meets such size or other criteria, shall:

1. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

2. Include any design and construction requirements for the structure, including any required geotechnical information;

3. Describe the operation and maintenance requirements for each structure; and

4. Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090E. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100E. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140E.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160E. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsection (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the department, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170E.

Section 36. MRP; Fish and Wildlife. Each application shall contain a fish and wildlife plan, consistent with 405 KAR 16:180E which provides:

(1) A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the permit area and portions of adjacent areas as determined by the department pursuant to Section 20(3).

(2) A statement explaining how the applicant will protect or enhance the following, if they are to be affected by the proposed activities:

(a) Threatened or endangered species of plants or animals listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), and their critical habitats;

(b) Species such as eagles, migratory birds or other animals protected by Kentucky and federal law, and their habitats;

(c) Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following

reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 16:210E; and

(c) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Department of Transportation) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Department of Transportation attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

Section 39. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 8:040E. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability:

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010E.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the department in the application all the information required by this regulation.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(c) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined;

(d) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

(e) The operator, if different from the applicant, who will conduct underground coal mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For businesses other than single proprietorships, the application shall contain the following information where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State, and if a foreign corporation, a certified copy of the certificate of authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant after December 31, 1970, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and MSHA identification number for the mine and all sections, if any.

(7) Each application shall contain proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

Section 3. Compliance Information. (1) Each application shall contain: a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;

(d) The current status of the proceedings and of the violation notice; and

(e) The actions, if any, taken by the applicant to abate the violation.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the department the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under Title 405, Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010E, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040E, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying such underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010E, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030E, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the department where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010E, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the department and made a part of the complete application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010E, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include, when specifically required in this regulation, a description of the existing, premining environmental resources within the proposed permit area and adjacent areas which may be affected or impacted by the proposed underground mining activities. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed on the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historic, and cultural preservation agencies.

Section 12. General Requirements for Geology and Hydrology. (1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 15.

(2) (a) Information on hydrology including water quality and quantity and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the department, to the extent that this data is available from an appropriate federal or state agency.

(b) If this information is not available from such agencies, the applicant may gather and submit this information to the department as part of the permit application.

(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

Section 13. Geology Information. (1) The geology description shall include a general statement of the geology within the proposed permit area and adjacent areas, down to and including the first aquifer to be affected below the lowest coal seam to be mined. The geology for areas proposed to be affected by surface operations and facilities, those surface lands overlying coal to be mined, and the coal to be mined shall be separately described, as follows:

(a) Areas affected by surface operations or facilities. Geology of all strata to be affected by surface operations or facilities shall be described; and where any coal seam is to be extracted by surface operations, geology of all strata down to and including the stratum immediately below the coal seam shall be described, including the following data resulting from analyses of test borings; core samplings, or outcrop samples:

1. The location of areas where subsurface water will be exposed at the face-up area;

2. The logs of drill holes showing the lithologic characteristics of the strata to be affected;

3. The physical properties of each stratum within the overburden; and

4. Chemical analyses of each stratum to be affected, including the stratum immediately below the lowest coal seam to be mined, to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity-producing materials.

(b) Areas underlain by coal seams to be mined. The geology for all surface lands within the proposed permit area which are underlain by the coal seam to be extracted and the geology of the coal seam itself shall be described; including:

1. Location of subsurface water, if encountered;

2. The depth, classification, and geologic structure of the overburden;

3. Pyritic content and potential acidity or alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined; and

4. Total sulfur and pyritic sulfur content of the coal seam.

(2) An applicant may request that all or part of the requirements of subsection (1)(a) of this section be waived by the department. The waiver may be granted only if the department makes a written determination that the information required is unnecessary for the application being considered.

Section 14. Ground Water Information. (1) The application shall contain a description of the ground water hydrology for the proposed permit and adjacent area, including, at a minimum:

(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;;

(b) The lithology and thickness of the aquifers;

(c) The uses of the water in the aquifers and water table; and

(d) The quality of subsurface water, if encountered.

(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the department.

Section 15. Surface Water Information. (1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the locations of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed permit area and adjacent areas.

(2) Surface water information for the proposed permit area shall include:

(a) Minimum, maximum, and average discharge conditions, which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations; and

(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows of surface or ground water from the affected area sufficient to identify seasonal variations, showing:

1. Total dissolved solids in milligrams per liter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standards units;
6. Total iron in milligrams per liter;
7. Dissolved iron in milligrams per liter;
8. Total manganese in milligrams per liter; and
9. Such other information as the department determines is relevant.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the department, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The department may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050E, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the department, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include such information as is available in the form of published data or data otherwise available from state and federal fish and wildlife management, conservation or regulatory agencies on fish and wildlife and their habitats where surface operations will be conducted or facilities located and the portions of the adjacent areas where effects upon such resources may reasonably be expected to occur.

(2) Prior to making application, the applicant may contact the department to determine what fish and wildlife resources information is available for the proposed permit area and adjacent area. The department, in consultation with the appropriate state and federal fish and wildlife management, conservation or land management agencies having responsibilities for fish or wildlife or their habitats, shall identify such information as is available and notify the applicant when such information may be obtained.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a pre-application investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one or

more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no such soil survey has been made for these lands, the applicant shall cause such a survey to be made.

(a) When a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050E, Section 3 for such designated land.

(b) When a soil survey as required by this section contains soil map units which have not been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the department, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the department.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings.

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the department.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the department to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, 38, 405 KAR 8:010E, Section 5(6), and 405 KAR 7:040E, Section 7.

(4) Maps, drawings and cross sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the department.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is approved as necessary for postmining land use as specified in 405 KAR 18:220E):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilites.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34, and disposal areas for underground development waste and excess spoil, in accordance with Section 28;

11. Cross sections, at locations as required by the department, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190E;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050E;

(e) A plan for revegetation as required in 405 KAR 18:200E, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200E, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KR 18:010E, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials,

and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150E, Section 1 and 405 KAR 18:190E, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040E; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of Title 405, Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the department to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit and adjacent area and whether subsidence if it occured could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands.

(2) If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the department agrees with such conclusion, no further information need be provided in the application under this section.

(3) In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the department determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface including such measures as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one or more of the following as required by 405 KAR 18:210E, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition.

2. Replacement of structures destroyed by subsidence.

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses.

4. Purchase of non-cancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

1. The results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence.

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the department and MSHA under 405 KAR 18:140E, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the department from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste. Each plan shall contain descriptions, including appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 405 KAR 18:130E. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030E, Section 27.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the department is required for alternative specifications or for steep cut slopes under 405 KAR 18:230E.

(c) A description of each measure to be taken to obtain approval of the department for alteration or relocation of a natural drainageway under 405 KAR 18:230E.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the department under 405 KAR 18:230E.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the department and other agencies as required in 405 KAR 24:040E, Section 2(4).

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040E, Section 2(6), the applicant seeks to have the department approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each plan shall contain a description, with appropriate maps and drawings, of the measures to be taken during and after the proposed underground mining activities, in accordance with Title 405, Chapter 18, to ensure the protection of:

(a) The quality of surface and ground water, both within the proposed permit area and adjacent areas, from adverse effects of the proposed underground mining activities;

(b) The rights of present users to surface and ground water;

(c) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities;

(d) Water quality by locating openings for mines in accordance with 405 KAR 18:060E, Section 5.

(2) The description shall include:

(a) A plan for the control, in accordance with Title 405, Chapter 18, of surface and ground water drainage into, through, and out of the proposed permit area;

(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, and surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 18:070E, according to the more stringent of the following:

1. Title 405, Chapters 16 through 20; or
2. Other applicable state and federal laws.

(c) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 18:110E.

(3) The description shall include a determination of the probable hydrologic consequences of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved solids, suspended solids, total iron, pH, total manganese, acidity, alkalinity and other parameters required by the department.

(4) Each plan shall contain a description, with appropriate drawings, of permanent entry seals and downslope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080E.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(a) Each plan shall:

1. Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;
2. Contain a description, map, and appropriate cross sections and drawings of the structure and its location;
3. Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 18;
4. Contain an estimate of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(b) Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, 30 CFR 77.216(a) shall:

1. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;
2. Include any geotechnical investigation, design, and construction requirements for the structure;
3. Describe the operation and maintenance requirements for each structure; and
4. Describe the timetable and plans to remove each structure, if appropriate.

(c) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall:

1. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;
2. Include any design and construction requirements for the structure, including any required geotechnical information;
3. Describe the operation and maintenance requirements for each structure; and
4. Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds:

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090E. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100E.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100E. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140E.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160E. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsection (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the department, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal or state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170E.

Section 36. MRP; Fish and Wildlife. Each application shall contain a fish and wildlife plan, consistent with the performance standards of 405 KAR 18:180E and which provides:

(1) A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the portions of the permit area and adjacent areas as determined by the department pursuant to Section 20.

(2) A statement explaining how the applicant will protect or enhance the following, if they are to be affected by the proposed activities:

(a) Threatened or endangered species of plants or animals listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.) and their critical habitats;

(b) Species such as eagles, migratory birds or other animals protected by state and federal law, and their habitats;

(c) Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relation-

ship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 18:220E; and

(c) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Department of Transportation) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Department of Transportation attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

Section 39. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 8:050E. Permits for special categories of mining.

RELATES TO: KRS 350.093, 350.445, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.093, 350.151, 350.450, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations, including certain special categories of mining. This regulation sets forth permit application requirements for special mining categories including mining on prime farmland, augering, in situ processes, offsite coal preparation plants, mountaintop removal mining, and mining on steep slopes. This regulation sets forth the only variance from the requirement to return to approximate original contour in steep slopes. This regulation sets forth the manner in which the contemporaneous reclamation requirements can be met for combined surface and underground mining activities.

Section 1. In Situ Processing Activities. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(2) Application requirements. Any application for a permit for operations covered by this section shall be made according to all requirements of this chapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operation involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 405 KAR 20:080E, including:

(a) Delineation of proposed holes and wells and production zone for approval of the department;

(b) Specifications of drill holes and casing proposed to be used;

(c) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(d) Plans for monitoring surface and ground water and air quality, as required by the department.

(3) Criteria for approval. No permit shall be issued for operations covered by this section unless the department first finds, in writing, upon the basis of a complete application made in accordance with subsection (2) of this section that the operation will be conducted in compliance with all requirements of this chapter relating to underground mining activities, and 405 KAR 20:080E and Title 405, Chapter 18.

Section 2. Augering. (1) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(2) Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 405 KAR 20:030E.

(3) No permit shall be issued for any operations covered

by this section unless the department finds, in writing, that in addition to meeting all other applicable requirements of this chapter, the operation will be conducted in compliance with 405 KAR 20:030E.

Section 3. Prime Farmlands. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland except:

(a) Any permit issued prior to August 3, 1977;

(b) Any renewal or revision of a permit issued prior to August 3, 1977. For the purposes of this paragraph, "renewal" of a permit shall mean a decision by the department to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the department to allow changes in the method of mining operations within the original permit area, or the decision of the department to allow incidental boundary changes to the original permit; or

(c) Lands included in any existing surface mining operation, for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

1. Such lands are part of a single continuous mining pit begun under a permit issued before August 3, 1977;

2. The permittee had a legal right to mine the lands prior to August 3, 1977 through ownership, contract, or lease but not including an option to buy, lease or contract; and

3. The lands contained part of a continuous recoverable coal seam that was being mined in the pit begun under a permit issued prior to August 3, 1977.

(d) For the purposes of this subsection a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad or powerline or similar crossing.

(e) The exception granted by paragraph (c) of this subsection applies only to lands mined to the coal face and related benches prior to August 3, 1982.

(2) Application requirements. If land within the proposed permit area is identified as prime farmland under 405 KAR 8:030E, Section 21 or 405 KAR 8:040E, Section 21, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(a) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a map unit and representative soil profile description for each prime farmland soil within the permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey are available and their use is approved by the department.

(b) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with 405 KAR 20:040E.

(c) A demonstration that excessive compaction will be avoided in replacement of the soil.

(d) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.

(e) If applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.

(f) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under Title 405, Chapter 10. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(g) Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

(3) Department consultation with the Secretary of Agriculture:

(a) Before any permit is issued for areas that include prime farmlands, the department shall consult with the Secretary of Agriculture.

(b) The Secretary of Agriculture may provide for review and comment of the proposed method of soil reconstruction in the plan submitted under subsection (2) of this section. The secretary may suggest revisions resulting in more complete and adequate reconstruction.

(c) Consultations shall be accomplished through the office of the State Conservationist of the U.S. SCS.

(4) Criteria for approval. A permit for the mining and reclamation of prime farmland may be granted by the department, if it first finds, in writing, upon the basis of a complete application, that:

(a) The approved proposed postmining land use of these prime farmlands will be cropland;

(b) The permit incorporates as specific conditions the contents of the plan submitted under subsection (2) of this section, after consideration of any revisions to that plan suggested by the Secretary of Agriculture under subsection (3) of this section;

(c) There is a technologically feasible plan to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(d) The proposed operations will be conducted in compliance with the requirements of 405 KAR 20:040E and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of Title 405, Chapters 7 through 24.

Section 4. Mountaintop Removal Mining. (1) Applicability. This section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(2) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in 405 KAR 20:050E, Section 1(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

(3) Criteria for approval. The department may issue a permit for mountaintop removal mining, without regard to

the requirements of 405 KAR 16:190E to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(a) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

1. After consultation with the appropriate land-use planning agencies, if any, the proposed land-use is deemed by the department to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

2. The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of 405 KAR 16:210E;

3. The proposed use would be compatible with adjacent land uses and existing state and local land use plans and programs; and

4. The department has provided, in writing, an opportunity of not more than sixty (60) days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any state or federal agency which the department, in its discretion, determines to have an interest in the proposed use.

(b) The applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under 405 KAR 16:190E, the operation will be conducted in compliance with the requirements of 405 KAR 20:050E.

(c) The requirements of 405 KAR 20:050E are made a specific condition of the permit.

(d) All other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 are met by the proposed operations.

(e) The permit is clearly identified as being for mountaintop removal mining.

(4) Periodic review:

(a) Any permits issued under this section shall be reviewed by the department to evaluate the progress and development of mining activities to establish that the permittee is proceeding in accordance with the terms of the permit:

1. Within the sixth month preceding the third year from the date of its issuance;

2. Before each permit renewal; and

3. Not later than the middle of each permit term.

(b) Any review required under paragraph (a) of this subsection need not be held if the permittee has demonstrated and the department finds, in writing, within three (3) months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(5) Modifications of permit. The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the department, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of KRS Chaper 350 and Title 405, Chapters 7 through 24.

Section 5. Steep Slope Mining. (1) This section applies to any persons who conduct or intend to conduct steep slope surface coal mining and reclamation operations, except:

(a) Where an applicant proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(b) Where a person obtains a permit under the provisions of Section 4; or

(c) To the extent that a person obtains a permit incorporating a variance under Section 6.

(2) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 405 KAR 20:060E, Section 2.

(3) No permit shall be issued for any operations covered by this section, unless the department finds, in writing, that in addition to meeting all other requirements of this chapter, the operation will be conducted in accordance with the requirements of 405 KAR 20:060E, Section 2.

Section 6. Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining. (1) General:

(a) Applicability. This section applies to non-mountaintop removal, steep slopes surface coal mining and reclamation operations where the operation is not to be reclaimed to achieve the approximate original contour required by 405 KAR 16:190E or 405 KAR 18:190E and 405 KAR 20:060E, Section 2(3).

(b) This section provides for a variance from approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations to:

1. Improve watershed control of lands within the permit area and on adjacent lands, when compared to the watershed control which would exist were the area restored to the approximate original contour; and

2. Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential, or public use, including receational facilities.

(2) Criteria for approval. The department may issue a permit for surface mining activities incorporating a variance from the requirements for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

(a) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use.

(b) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.

(c) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 405 KAR 16:210E or 405 KAR 18:220E, as appropriate.

(d) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if:

1. There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges had the area been restored to approximate original contour, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws; or, there will be an increase in streamflow during times of the year when the stream is normally at low

flow or dry conditions and such increase in streamflow is determined by the department to be beneficial to public or private users or the ecology of such streams; and

2. The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

(e) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under 405 KAR 8:030E, Section 4 or 405 KAR 8:040E, Section 4 and shall show an understanding that the variance could not be granted without the surface owner's request.

(f) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 405 KAR 20:060E, Section 3.

(g) All other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 will be met by the proposed operations.

(3) If a variance is granted under this section:

(a) The requirements of 405 KAR 20:060E, Section 3 shall be made a specific condition of the permit.

(b) The permit shall be specifically marked as containing a variance from approximate original contour.

(4) Periodic review:

(a) Any permits incorporating a variance issued under this section shall be reviewed by the department to evaluate the progress and development of the mining activities, to establish that the permittee is proceeding in accordance with the terms of the variance:

1. Within the sixth month preceding the third year from the date of this issuance;

2. Before each permit renewal; and

3. Not later than the middle of each permit term.

(b) If the permittee demonstrates to the department at any of the times specified in paragraph (a) of this subsection that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, the review required at that time need not be held.

(5) Modifications of permit. The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the department, if it determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 7. Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Operations. (1) Applicability:

(a) This section applies to any permittee who conducts or intends to conduct combined surface mining activities and underground mining activities, where contemporaneous reclamation as required by 405 KAR 16:020E is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operations for the surface mining activities can be completed.

(b) This section provides only for delay in reclamation of surface mining activities, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

(2) Application requirements. Any applicant who desires to obtain a variance under this section shall file with the department complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps and plans, which:

(a) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(b) Show how multiple future disturbances of surface lands or waters will be avoided;

(c) Identify the specific surface areas for which a variance is sought and the particular sections of KRS Chapter 350 and Title 405, Chapters 7 through 24 from which a variance is being sought;

(d) Show how the activities will comply with 405 KAR 20:020E and other applicable requirements of Title 405, Chapters 7 through 24;

(e) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(f) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(g) Show how off-site storage of spoil will be conducted to comply with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and 405 KAR 16:130E.

(3) Criteria for approval. A permit incorporating a variance under this section may be issued by the department, if it first finds, in writing, upon the basis of a complete application filed in accordance with this section that:

(a) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(b) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resources and will avoid multiple future disturbances of surface land or waters;

(c) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of Title 405, Chapters 7 through 24 and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(d) The surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(e) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by KRS Chapter 350 and 405 KAR 16:020E;

(f) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 405 KAR 20:020E;

(g) Provisions for off-site storage of spoil will comply with the requirements of KRS Chapter 350 and 405 KAR 16:130E;

(h) Liability under the performance bond required to be filed by the applicant with the department pursuant to Title 405, Chapter 10 shall be for the duration of the underground mining activities and until all requirements of Title 405, Chaper 10 have been compiled with; and

(i) The permit for the surface mining activities contain specific conditions:

1. Delineating the particular surface areas for which a variance is authorized;

2. Identifying the particular requirements of 405 KAR 20:020E which are to be compiled with, in lieu of the otherwise applicable provisions of KRS Chapter 350 and Title 405, Chapter 16; and

3. Providing a detailed schedule for compliance with the particular requirements of 405 KAR 20:020E identified under paragraph 1 of this paragraph.

(4) Periodic review. Variances granted under permits issued under this section shall be reviewed by the department no later than three (3) years from the dates of issuance of the permit and any permit renewals.

Section 8. Coal Processing Plants or Support Facilities not Located Within the Permit Area of a Specified Mine. (1) Applicability. This section applies to any person who operates or intends to operate coal processing plants and associated support facilities not within a permit area of a specific mine.

(2) Permit required. Any person who operates such a processing plant or support facility shall have obtained a permit from the department under Title 405, Chapters 7 through 24.

(3) Criteria for approval:

(a) Any application for a permit for operations covered by this section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and drawings of the construction, operation, maintenance and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with 405 KAR 20:070E.

(b) No permit shall be issued for any operation covered by this section unless the department finds, in writing, that, in addition to meeting all other applicable requirements of this chapter, the operations will be conducted in compliance with the requirements of 405 KAR 20:070E.

Section 9. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 10:010E. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to regulate surface coal mining and reclamation operations, including requiring bond sufficient to insure satisfactory reclamation. This regulation sets forth the general requirements for performance bonds and liability insurance. This regulation further sets out general minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations, and general requirements for cumulative and incremental bonds.

Section 1. Applicability. This chapter sets forth the minimum requirements for filing and maintaining performance bonds and insurance for surface coal mining and reclamation operations under KRS Chapter 350.

Section 2. Requirement to File a Bond. (1) After an application for a new, revised or renewed permit to conduct surface coal mining and reclamation operations has been approved under Title 405, Chapter 8, but before such permit is issued, the applicant shall file with the department a performance bond payable to the department. The performance bond will be conditioned upon the faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the provisions of the reclamation plan and permit. The amount, duration, form, conditions and terms of the performance bond shall conform to 405 KAR 10:020E and 405 KAR 10:030E.

(2) A permittee shall not disturb surface acreage prior to receipt of approval from the department of a performance bond covering the surface acreage to be affected.

(a) Liability on the performance bond shall cover all surface coal mining and reclamation operations to be conducted within the permit area until all reclamation requirements of Title 405, Chapters 7 through 24 have been met. After the amount of the bond has been determined for the permit area in accordance with 405 KAR 10:020E, the permittee or applicant may either file:

1. The entire performance bond required during the term of the permit;

2. A cumulative bond schedule listing the areas covered by the bond and the sequence for release of acreage as it progresses through varying reclamation phases and the addition of other acreage as it is affected. The amount of bond required to obtain a permit shall include the full reclamation cost of the initial area being affected; or

3. An incremental bond schedule and the new performance bond required for the first increment in the schedule.

(b) When the permittee elects to "increment" the amount of the performance bond during the term of the permit, he shall propose the initial and successive incremental areas for bonding on the permit application map submitted for approval as provided in 405 KAR 8:030E. The department shall specify the proportion of the total bond amount required for the term of the permit which will be filed prior to commencing operations on each approved incremental area. The scheduled amount of each performance bond increment shall be filed in the sequence approved in the permit, and shall be filed with the department at least thirty (30) days prior to the commencement of surface coal mining and reclamation operations in the next incremental area.

(3) The amount, duration, form, conditions and terms of the performance bond shall conform to 405 KAR 10:020E and 405 KAR 10:030E.

Section 3. Requirement to File a Certificate of Liability Insurance. Each applicant for a permit shall submit to the department, as part of the permit application, a certificate

issued by an insurance company authorized to do business in the United States. The amount, duration, form, conditions and terms of this insurance shall conform to 405 KAR 10:030E.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 10:020E. Amount and duration of performance bond.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations governing the amount and duration of performance bonds for surface coal mining and reclamation operations. This regulation specifies criteria upon which to base determination of bond amounts and requires certain periods of liability during which the bonds must remain in effect. This regulation provides for adjustments in bond amounts.

Section 1. Determination of Bond Amount. The standard applied by the department in determining the amount of performance bond shall be the estimated cost to the department if it had to perform the reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under KRS Chapter 350, Title 405, Chapters 7 through 24 and the permit, and such additional work as would be required to achieve compliance with the general standards for revegetation in 405 KAR 16:200E, Section 6(2)(c) or 405 KAR 18:200E, Section 6(2)(c) in the event the permittee fails to implement an approved alternative postmining land use plan within the two (2) years required by 405 KAR 16:200E, Section 6(2)(c)2 or 405 KAR 18:200E, Section 6(2)(c)2. This amount shall be based on, but not be limited to:

(1) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030E, Section 24(4) and 405 KAR 8:040E, Section 24(4);

(2) The additional estimated costs to the department which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(3) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this section; and

(4) Such other cost information as may be required by or available to the department.

Section 2. Minimum Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued shall be $10,000 for the entire area under one (1) permit, except for operations affecting two (2) acres or less.

Section 3. Period of Liability. (1) Liability under performance bond(s) applicable to a permit shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the provisions of the permit have been completed, and the permit terminated by release of the permittee from any further liability in accordance with 405 KAR 10:040E.

(2) In addition to the period necessary to achieve compliance with all requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the permit including the standards for the success of revegetation as required by 405 KAR 16:200E and 405 KAR 18:200E, the period of liability under performance bond shall continue for a period of five (5) years beginning with the last year of substantially augmented seeding, fertilizing, irrigation or other work. The period of liability shall begin again whenever substantially augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. A portion of a bonded area requiring extended liability because of substantial augmentation may be separated from the original area and bonded separately upon approval by the department. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such area portion:

(a) Is not significant in extent in relation to the entire area under bond; and

(b) Is limited to a distinguishable contiguous portion of the bonded area.

(3) If the department approves a long-term intensive agricultural postmining land use, in accordance with 405 KAR 16:210E, the five (5) year period of liability shall commence at the date of initial planting for such long-term intensive argicultural land use.

(4) If the department issues a written finding approving a long-term intensive agricultural land use, the operation shall be exempt from the requirements of 405 KAR 16:200E, Section 1(1). Such a finding shall not constitute a grant of an exception to the bond-liability periods of this section.

(5) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved under 405 KAR 16:210E, Section 4. Actions of third parties which are beyond the control and influence of the operator and for which the operator is not responsible under the permit need not be covered by the bond.

(6) If an area is separated under subsection (2) of this section, that portion shall be bonded separately and the period of liability shall commence anew. The period of

liability for the remaining area shall continue in effect without extension. The amount of bond on the original bonded area may be adjusted in accordance with Section 4.

Section 4. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit shall be adjusted by the department as the acreage in the permit area is increased or decreased, or when the department determines that the cost of future reclamation, restoration or abatement work has changed substantially. Increase in performance bond liability shall not affect existing obligations of sureties without their consent.

(2) A permittee may request reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the department to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040E, Section 1.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 10:030E. Form, terms and conditions of performance bonds and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.100, 350.110, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.060, 350. 064, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to specify forms, terms, and conditions for performance bonds and liability insurance. This regulation sets forth the various forms and conditions which the department will accept in satisfaction of the bonding requirements. This regulation sets forth that bonds shall be payable to the department and other conditions. This regulation specifies certain alternative bonds, in addition to the surety bond, and the conditions upon which the department will accept them. This regulation specifies the terms and conditions of liability insurance.

Section 1. Form of Performance Bond. (1) The form for the performance bond shall be prescribed by the department in accordance with this section.

(2) The performance bond shall be either:
(a) A surety bond;
(b) A collateral bond;
(c) Establishment of an escrow account;
(d) Self-bonding; or
(e) A combination of these bonding methods.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the department as provided in 405 KAR 10:020E, Sections 1 and 2.

(2) The performance bond shall be payable to the department.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the department has approved pursuant to 405 KAR 10:010E, Section 2(2)(b).

(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020E, Section 3.

(5) Surety bonds shall be subject to the following conditions:

(a) The department shall not accept the bond of a surety company unless the bond shall not be cancellable by the surety at any time for any reason including, but not limited to, non-payment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the written approval of the department; provided, the surety gives at least sixty (60) days written notice to both the permittee and the department of the intent to cancel prior to cancellation. Such notice shall be by certified mail and shall not be effective until received by both the permittee and the department. Cancellation shall not be effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the department. The department may approve such cancellation only if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is amended so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with 405 KAR 10:020E and the remaining performance bond liability.

(b) The department shall not accept a surety company's bond in excess of the company's maximum single obligation as provided by Kentucky law, unless the surety company satisfies Kentucky law for exceeding that limit. If no maximum single obligation limit is established by Kentucky law, the department shall not accept surety bonds in excess of ten (10) percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(c) The department shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three (3) times the company's maximum single obligation as provided by Kentucky law or, in the absence of Kentucky law, as provided in paragraph (b) of this subsection.

(d) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(e) The bond shall provide that:

1. The surety will give prompt notice to the permittee and the department of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business;

2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, written notice shall be given promptly to the permittee and the department;

3. Upon the incapactity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the pemittee shall be deemed to be without bond coverage in violation of 405 KAR 10:010E, Section 2(2) and shall be notified by the department that he has a reasonable time, not to exceed ninety (90) days, to replace bond coverage. During this period, the department shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit.

(6) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The department shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.

(b) The department shall require that certificates of deposit be assigned to the department in writing, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The department shall not accept an individual certificate of deposit for a denomination in excess of $40,000, or maximum insurable amount as determined by FDIC and FSLIC.

(d) The department shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.

(e) The department shall only accept automatically renewable certificates of deposit.

(f) The department shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the United States.

(b) Letters of credit shall be irrevocable. The department may approve withdrawal of a letter of credit as security in accordance with a schedule approved with the permit. Such withdrawal may not occur less than ninety (90) days after written notice has been given to the department. Those letters of credit approved for withdrawal on areas requiring continued bond coverage shall be forfeited and collected by the department if not replaced by other suitable collateral at least thirty (30) days before the earliest day of withdrawal authorized by the department.

(c) The letter must be payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with 405 KAR 10:050E.

(d) The department shall not accept a letter of credit in excess of ten (10) percent of the issuer's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(e) The department shall not accept letters of credit from an issuer for any person, on all permits held by that person, in excess of three (3) times the issuer's maximum single obligation as provied by Kentucky law or, in the absence of Kentucky law, as provided in subsection (5)(b) of this section.

(f) The letter of credit shall provide that the department is unconditionally authorized to draw down the bond amount upon forfeiture.

(g) The letter of credit shall provide that:

1. The issuer will give prompt notice to the permittee and the department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;

2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the department;

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of 405 KAR 10:010E, Section 2(2) and shall be notified by the department that he has a reasonable time, not to exceed ninety (90) days, to replace bond coverage. During this period, the department shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit.

Section 3. Escrow Bonding. (1) The department may authorize the permittee or applicant to supplement a bonding program through the establishment of an escrow account deposited in one (1) or more federally insured accounts payable on demand only to the department or deposited with the department directly. Contributions to the account may be based on acres affected or tons of coal produced or any other rate approved by the department. In all cases, as long as the total bond including the escrow amount, as determined by the department in the bonding schedule, shall not be less than the amount required under 405 KAR 10:020E, less amounts released under 405 KAR 10:040E.

(2) Escrow funds deposited in federally insured accounts shall not exceed the maximum insured amount under applicable federal insurance programs such as by FDIC or FSLIC.

(3) Interest paid on escrow accounts shall be retained in the escrow account and applied to the bond value of the escrow account unless the department has approved that the interest be paid to the permittee. In order to qualify for interest payment the permittee must request such action in writing during the permit application process under 405 KAR 10:010E, Section 2.

(4) Certificates of deposit may be substituted for escrow accounts upon the approval of the department. Provisions of Section 2(6) shall apply to certificates of deposit as a collateral bond.

Section 4. Self-bonding. The department may accept a self-bond from the applicant under the following conditions:

(1) The applicant shall designate the name and address of a suitable agent to receive service of process.

(2) The applicant, or the applicant's parent organization, in the event the applicant is a subsidiary corporation, shall have demonstrated to the satisfaction of the department a history of financial solvency and continuous operation as a business entity for ten (10) years prior to filing the application. Such demonstration shall include a financial statement in sufficient detail to allow the department to determine whether it is reasonable to predict from the ownership patterns and financial history of the applicant that it will be financially capable of completing all reclamation requirements throughout the life of surface coal mining and reclamation operations. Such statement shall include, at a minimum:

(a) Identification of operator by:
1. For corporation, name, address, telephone number, state of incorporation, principal place of business, principal office in Kentucky, the name, title, and authority of persons signing the application, and a statement of authority to do business in Kentucky; and
2. For all other forms of business enterprises, name, address, and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application, and principal office in Kentucky;
(b) Estimated amount of bond likely to be required after approval of the permit which will be determined in accordance with 405 KAR 10:020E, and the estimated maximum liability likely to be required during the life of the mine;
(c) History of other bonds procured by the applicant for mining operations in any state, including:
1. Name of sureties, if any, for outstanding bonds;
2. Amounts of outstanding bonds;
3. Name of any surety which denied any bond; and
4. Unsatisfied claims against any bond;
(d) Brief chronological history of business operations conducted within the last ten (10) years including information showing:
1. Continuous operations; and
2. The jurisdiction within which each such operation has been conducted;
(e) Audited financial statements prepared and certified by a disinterested independent certified public accountant. All statements shall be prepared following generally accepted principles of accounting and shall include:
1. A common-size comparative balance sheet which shows assets, liabilities, and owner's equity for ten (10) years. The department shall have the discretion to increase this length of time to any period which is necessary to show financial solvency and continuous operation. The common-size comparative balance sheet shall be detailed with regard to owner's equity, especially retained earnings, so as to set forth a series of retained-earning statements showing the changes that have occurred in retained earnings during the required period of time;
2. A common-size comparative income statement which shows all revenues and expenses for ten (10) years or for such longer time as is required for the common-size comparative balance sheet; and
3. A statement of the applicant's working capital and an analysis of assets and liabilities calculated for each year covered by the common-size comparative balance sheet and income statement that show: a schedule of the percentage of each classification of current assets to total current assets, the current ratio, the acid-test ratio, the liquidity ratio, the asset ratio, and the return on investment.
4. In addition to the above, all ratios must be calculated with the bond amount added to the applicant's current or total liabilities;
5. A ratio of the applicant's capital assets subject to a mortgage or security interest to those liabilities to which the assets are subject. If the offer of real property or collateral for the bond will alter this ratio, this must be illustrated.
(f) A satisfactory basis to compare all ratios submitted pursuant to paragraph (e) of this subsection. The department shall have the right to challenge, prohibit, or prescribe the inclusion of any specific item or the value thereof within any of the above statements or ratios. If the value is challenged, the department shall appoint an appraiser or appraisers to value the item. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the department and the applicant. The reasonable expense of the appraisers shall be borne by the applicant. The findings of the appraisal shall be final and binding.
(g) A final determination by the independent certified public accountant regarding the applicant's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine.
(h) If the department deems necessary, evidence of financial responsibility through letters of credit, or a rating of securities issued to the applicant by a recognized national securities rating company.
(i) A statement listing any liens filed on the assets of the applicant in any jurisdiction in the United States, actions pending or judgments rendered within the last ten (10) years against the applicant but not satisfied, and petitions or actions in bankruptcy including actions for reorganization. Each such lien, action, petition, or judgment shall be identified by the named parties, the jurisdiction in which the matter was filed, the case, file or docket number, the date of filing, and the final disposition or current status of any action still pending.
(j) A statement listing any notices issued by the Securities and Exchange Commission or proceedings initiated by any party alleging a failure to comply with any public disclosure or reporting requirement under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof.
(3) Indemnity agreement:
(a) The indemnity agreement has been executed by the applicant, said agreement has also been executed by:
1. If a corporation, then by two (2) corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided.
2. To the extent the history or assets of a parent organization are relied upon to make the showings of this section, then the parent organization and every parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of subparagraph 1 of this paragraph.
3. If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and
4. If the applicant is married, the applicant's spouse if directly involved as part of the business on a regular bona fide basis or as an officer of the organization.
(b) The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one (1) of the specified positions shall indicate each capacity in which he or she signs the indemnity agreement.
(c) The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it.
(d) For purposes of this section, "principal investor" or "parent organization" means anyone with a ten (10) percent or more beneficial ownership interest, directly or indirectly, in the applicant.
(4) If at any time the conditions upon which the self-bond was approved no longer prevail, the department shall require the posting of a surety or collateral bond before mining operations may continue.

Section 5. Substitution of Bonds. (1) The department may allow permittees to substitute existing surety or col-

lateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to such substitute bonds.

(2) The department shall not release existing performance bonds until the permittee has submitted and the department has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040E.

Section 6. Terms and Conditions for Liability Insurance. (1) The department shall require the applicant to submit at the time of permit application, proof that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damages as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells. Minimum insurance coverage for bodily injury shall be $300,000 for each occurrence and $500,000 aggregate; and minimum insurance coverage for property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(2) The policy shall be maintained in full force during the term of the permit or any renewal thereof, including completion of all reclamation operations under Title 405, Chapters 7 through 24.

(3) The policy shall include a clause requiring that the insurer notify the department whenever substantive changes are made in the policy, including any termination or failure to renew.

Section 7. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 10:040E. Procedures, criteria and schedule for release of performance bond.

RELATES TO: KRS 350.060, 350.064, 350.093, 350.110, 350.113, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.093, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to set out by regulation procedures and criteria for the release of performance bond. This regulation specifies the procedures, criteria, and schedule, including reclamation phases, for the release and partial release of performance bonds. This regulation also sets forth certain notice and hearing requirements, pertinent to bond release.

Section 1. Procedures for Seeking Release of Performance Bond. (1) The permittee or any person authorized to act on his behalf, may file an application with the department for release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a reclamation phase as defined in Section 2(5) has been completed on the entire permit area or on an area approved pursuant to 405 KAR 10:010E, Section 2(2)(b) for the incremental filing and release of bond liability. The procedures of this section also apply to requests made pursuant to 405 KAR 10:020E, Section 4.

(a) Bond release applications may only by filed at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed.

(b) The application shall include copies of notices sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These notices shall be sent before the permittee files the application for release.

(c) Within thirty (30) days after filing the application for release the permittee shall submit proof of publication of the advertisement required by subsection (2) of this section. Such proof of publication shall be considered part of the bond release application.

(2) At the time of filing an application under this section, the permittee shall advertise the filing of the application 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 permit area is located. The advertisement shall:

(a) Be placed in the newspaper at least once a week for four (4) consecutive weeks;

(b) Show the name of the permittee, including the number and date of issuance or renewal of the permit;

(c) Show the precise location and the number of acres of the lands subject to the application;

(d) Show the total amount of bond in effect for the permit area and the amount for which release is sought;

(e) Summarize the reclamation, restoration or abatement work done, including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of that work;

(f) Describe the reclamation results achieved, as they relate to compliance with KRS Chapter 350, Title 405, Chapters 7 through 24 and the approved mining and reclamation plan and permit; and

(g) State that written comments, objections, and requests for a public hearing pursuant to 405 KAR 7:090E may be submitted to the department, provide the appropriate address of the department, and the closing date by which comments, objections, and requests must be received.

(3) Written objections to the proposed bond release and requests for a public hearing may be filed with the department by any person having an interest which is or may be adversely affected by the proposed bond release within thirty (30) days following the last advertisement of the filing of the application.

(4) Upon receipt of an application for bond release the department shall provide notice by certified mail to the county judge/executive of the county in which the permit area is located. The notice shall contain the information required in subsection (2) of this section.

(5) The department shall inspect and evaluate the reclamation work involved within thirty (30) days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit.

(6) (a) If no hearing has been requested pursuant to Section 1(3), the department shall notify the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the receipt of the completed application, or within thirty (30) days from the close of the public comment period if comments were received, whichever occurs last.

(b) If a hearing has been held under 405 KAR 7:090E, the notification of the decision shall be made to the permittee and all interested parties within thirty (30) days after conclusion of the hearing.

(c) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to seek administrative or judicial review of the decision.

(7) In the event of a public hearing required under this section, the department shall inform the permittee, local government, and any objecting party of the time, date, and place of the hearing and publish notice of the hearing 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 permit area is located once a week for two (2) consecutive weeks before the hearing. The hearing shall be held pursuant to 405 KAR 7:090E and shall be held within thirty (30) days of the receipt of the request, in the locality of the permit area, or the central office of the department in Frankfort, Kentucky, at the option of the objector.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) Liability under performance bonds shall not be eligible for release until the permittee has met the requirements of the applicable reclamation phase as defined in subsection (5) of this section. The department may release portions of the liability under performance bonds applicable to a permit following completion of reclamation phases on the entire permit area or on incremental areas within the permit area which have been designated in the approved reclamation plan.

(2) The maximum portion of the liability under performance bonds applicable to a permit area which may be released at any time prior to the complete release of all bond liability for the entire permit areas shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to the entire permit area, as determined under 405 KAR 10:020E, times:

(a) 0.6 if reclamation phase I has been completed on the acreage; and

(b) An additional 0.25 if reclamation phase II has been completed on the acreage; and

(c) An additional 0.15 if reclamation phase III has been completed on the acreage.

(3) The department may choose to release all bond liability for an increment if the phase III reclamation of the increment is complete. The portion of the permit area being released from bond coverage shall be capable of supporting the proposed postmining land use independent of the successful completion of the reclamation of portions of the permit area still under bond or not yet initially disturbed. If capability to support the postmining land use for an increment can be achieved only after successful reclamation of an additional portion of the permit area, no increment shall be totally released from bond liability until release of the phase III bond for the last increment on which it is dependent.

(4) The department shall not release any liability under performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the department to complete the approved reclamation plan, achieve compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 or the permit, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area. Where the permit includes an alternative postmining land use plan approved pursuant to 405 KAR 16:210E or 405 KAR 18:220E, the department shall also retain sufficient liability for the department to complete any additional work which would be required to achieve compliance with the general standards for revegetation in 405 KAR 16:200E, Section 6(2)(c) or 405 KAR 18:200E, Section 6(2)(c) in the event the permittee fails to implement the approved alternative postmining land use plan within the two (2) years required by Section 405 KAR 16:200E, Section 6(2)(c)2 or 405 KAR 18:200E, Section 6(2)(c)2.

(5) For the purposes of this section:

(a) Reclamation phase I shall be deemed to have been completed when the permittee completes backfilling, regrading, topsoil replacement, and drainage control including soil preparation, seeding, planting and mulching in accordance with the approved reclamation plan and a planting report for the area has been submitted to the department; and

(b) Reclamation phase II shall be deemed to have been completed when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of KRS 350.420, Title 405, Chapters 16 or 18, or the permit; and

3. With respect to prime farmlands, soil productivity has been restored as required by 405 KAR 20:040E, Section 1(3) and the plan approved under 405 KAR 8:050E, Section 3; and

4. The provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department.

(c) Reclamation phase III will be deemed to have been completed when the permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved pursuant to 405 KAR 16:210E or 405 KAR 18:220E and achieved compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, the permit and the applicable liability period under 405 KAR 10:020E, Section 3(2) has expired.

Section 3. This regulation shall become effective on the

date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 10:050E. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.130, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the department. This regulation sets forth that certain violations of KRS Chapter 350 and regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This regulation sets forth that a hearing may be requested before such forfeiture can be affected. This regulation also specifies a method to determine the amount of bond forfeiture.

Section 1. General. (1) The department shall forfeit all or part of a bond for any permit pursuant to the procedures and criteria of this regulation.

(2) The department may withhold forfeiture if the permittee or the surety agree to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The department may allow the surety to complete the reclamation plan, if the surety can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the department.

Section 2. Procedures. (1) In the event forfeiture of the bond is required by Section 3, the department shall:

(a) Send written notification by certified mail, return receipt requested to the permittee, and the surety on the bond, if applicable, of the department's determination to initiate forfeiture of all or part of the bond and the reasons for the forfeiture, including a finding of the amount proposed to be forfeited;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 405 KAR 7:090E; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the department shall proceed in an action for collection on the bond.

(2) The department may forfeit any or all bonds deposited for an entire permit area, in order to satisfy this regulation. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation shall extend to the entire permit area.

(3) The department shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area on which bond coverage applied, and to cover associated administrative expenses.

Section 3. Criteria for Forfeiture. (1) A bond may be forfeited, if the department finds that:

(a) The permittee has violated any of the terms or conditions of the bond; or

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or Title 405, Chapters 7 through 24 within the time required by KRS Chapter 350, Title 405, Chapters 7 through 24 and the permit; or

(c) The permit for the area under bond has been revoked, or the operation terminated unless the permittee or surety assumes liability to the satisfaction of the department for completion of reclamation work; or

(d) The permittee or surety has failed to comply with a compliance schedule approved pursuant to Section 1(2).

(e) The permittee has become insolvent, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court.

Section 4. Determination of Forfeiture Amount. The department shall:

(1) Determine the amount of the bond to be forfeited on the basis of the estimated cost to the department or its contractor to complete the reclamation plan and other regulatory requirements in accordance with KRS Chapter 350, Title 405, Chapters 7 through 24 and the requirements of the permit; and

(2) Deposit the forfeited amount in an appropriate account for use in the payment of all costs and administrative expenses associated with the conduct of reclamation, restoration or abatement activities by the department on the permit area to which the forfeited bond applies. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 10:060E. Bonding requirements for long-term facilities and structures.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.110, 350.130, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.130, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to regulate surface coal mining and reclamation operations in such manner as to insure that satisfactory reclamation is accomplished. KRS Chapter 350 in pertinent part also directs the department to recognize the distinct differences between surface mining and underground coal mining. This regulation describes procedures to determine bond amounts, periods of liability, forms of bonds, and forfeiture for certain long-term facilities and structures. This regulation is applicable to portions of underground coal mines which will disturb the surface for more than five (5) years and certain other structures and facilities.

Section 1. Applicability. (1) Operations subject to the provisions of this regulation are:
(a) Portions of underground coal mines which will continuously disturb the surface for a period in excess of five (5) years;
(b) Coal-processing plants to be operated for more than five (5) years from the date a permit is first issued;
(c) Coal-refuse areas to be operated for more than five (5) years;
(d) Coal-loading facilities to be operated for more than five (5) years from the date a permit is first issued; and
(e) Long-term coal-related facilities to be permitted for operation longer than five (5) years in accordance with 405 KAR 8:050E, Section 8.
(2) Such operations, conducted within a permit area for a mine including areas or facilities not subject to this regulation, may be bonded as a separate increment of the mine permit area. If bonded separately, provisions of this regulation shall apply to that increment. If bonded as part of the permit area which included areas or facilities not subject to this regulation, bond liability shall continue in accordance with 405 KAR 10:020E, Section 3.

Section 2. Amount of Bond Required. (1) The department shall determine the bond amount necessary to complete reclamation of the area in accordance with 405 KAR 10:020E, Section 1.
(2) The area considered in the reclamation plan shall include the entire area disturbed.
(3) The amount of bond necessary to obtain a permit is the entire performance bond required during the term of the permit.

Section 3. Period of Liability. (1) The period of liability for performance-bond coverage shall commence with issuance of a permit and continue for the full term of the permit as established under 405 KAR 8:010E, Section 17.
(2) A permittee seeking to renew a permit shall file a performance bond as part of the application for permit renewal no less than 120 days prior to the expiration of an existing permit in accordance with 405 KAR 8:010E, Section 21. The new bond shall commence upon the expiration of the existing permit and continue throughout the term of the new permit, regardless of the issuance date.
(3) Upon completion of the useful life of the facility, bond or other security shall be required to cover the reclamation phases including the period of extended revegetation liability under 405 KAR 16:200E, Section 6 or 405 KAR 18:200E, Section 6.

Section 4. Form of Bond. Performance bonding may be authorized by the department in accordance with the methods listed in 405 KAR 10:030E, Section 1. An escrow account may be established on the basis of a coal-production rate, periodic deposit schedule, or other similar schedule, so that replacement in whole or part of surety bond with collateral bond may be authorized in accordance with 405 KAR 10:030E, Section 3. Upon development of full bond coverage under an escrow account, any surety bond or self-bond may be terminated. All bonding methods shall comply with provisions and conditions set forth in this regulation.

Section 5. Applicability of other regulations. Except to the extent that provisions of Title 405, Chapter 10 conflict with this regulation, all other provisions of Title 405, Chapter 10 shall apply to bonding requirements for facilities subject to this regulation.

Section 6. Mine Drainage. Performance-bond liability shall include construction of planned impoundments, conveying systems, and treatment facilities for mine drainage in accordance with standards of 405 KAR 16:070E, and 405 KAR 16:060E, Sections 4 and 5, or 405 KAR 18:070E and 405 KAR 18:060E, Sections 4 and 5. Bond release for such facilities shall be authorized only after final inspection, acceptance, and approval by the department and is not subject to the period of liability of 405 KAR 10:020E, Section 3 or the bond-release critieria of 405 KAR 10:040E, Section 2. Procedures for seeking bond release shall be conducted in accordance with 405 KAR 10:040E, Section 1. Bond liability with respect to mine drainage shall extend to the construction and ultimate removal of facilities described in the permit application or reclamation plan as associated with the treatment of mine drainage. The estimated bond amount computed under 405 KAR 10:020E, Section 1 shall not include continuous treatment, monitoring, or potential unpredictable expenses as a result of mine drainage.

Section 7. Bond Forfeiture. The department may forfeit a bond pursuant to this regulation if:
(1) The permittee has not filed a performance bond or other security as required under this regulation 120 days prior to permit renewal; or
(2) The department determines that a permittee is subject to forfeiture under the criteria of 405 KAR 10:050E, Section 3.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 12:010E. General provisions for inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.130, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to rigidly enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation generally sets forth a rigid enforcement and inspection policy for the department. This regulation directs that inspections be made at irregular intervals and without need of a warrant or prior notice to the operator. This regulation requires certain frequencies for inspections and compete record keeping of the evidence, records and observations made during inspections. This regulation also sets forth the general policy of public participation in the enforcement process and references the civil and criminal penalties of KRS Chapter 350.

Section 1. Applicability. The provisions of this chapter shall apply to all surface coal mining and reclamation operations and coal exploration operations.

Section 2. Inspection and Enforcement. In accordance with the provisions of this chapter, the department shall conduct or cause to be conducted such inspections, studies, investigations or other determinations as it deems reasonable and necessary to obtain information and evidence with which to ensure that surface coal mining and reclamation operations and coal exploration operations are conducted in accordance with the provisions of KRS Chapter 350, Title 405, Chapters 7 through 24, and all terms and conditions of the permit.

Section 3. Timing and Conduct of Inspections. (1) Right of entry and access. Authorized representatives of the department shall have unrestricted right of entry and access to all parts of the permit area for any purpose associated with their proper duties pursuant to this Title, including but not limited to, the purpose of delivering documents or information of any kind to persons associated with the operations or receiving documents or information from persons associated with the operation.
(2) Prior notice. The department shall have no obligation to give prior notice that an inspection will be conducted.
(3) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the department deems such inspections necessary to properly monitor compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and conditions of the permit.
(4) Frequency of inspections:
(a) The department shall conduct an average of at least one (1) partial inspection per month of each surface coal mining and reclamation operation under its jurisdiction. A partial inspection is an on-site review of a permittee's compliance with some of the permit conditions and requirements of KRS Chapter 350 and the regulations promulgated pursuant thereto.
(b) The department shall conduct an average of at least one (1) complete inspection per calendar quarter of each surface coal mining and reclamation operation under its jurisdiction. A complete inspection in an on-site review of a permittee's compliance with all permit conditions and requirements of KRS Chapter 350 and regulations promulgated thereto, within the entire area disturbed or affected by surface coal mining and reclamation operations.
(c) The department shall conduct periodic inspections of all coal exploration operations.

Section 4. Record of Inspection. (1) Authorized representatives of the department shall make and maintain written records of inspections and other activities including observations made and factual matters discovered. A copy of such record shall be made available to the permittee.
(2) Preservation of inspection materials and enforcement records of the department shall be accomplished pursuant to KRS 61.870 to 61.884 and regulations adopted pursuant thereto.
(3) The department shall perform whatever additional preservation, authorization, and custody is deemed necessary under the circumstances to preserve evidence for hearings pursuant to 405 KAR 7:090E.

Section 5. Penalties and Sanctions. Any person who violates any provision of KRS Chapter 350 or any provision of Title 405, Chapters 7 through 24, or any permit condition, or who fails to perform the duties imposed by such provisions, or who fails to comply with a determination or order of the department pursuant to such provisions, shall be subject to civil and criminal penalties as set forth in KRS 350.465(3)(h), 350.990, 405 KAR 7:090E, or any other applicable provision of law, and shall be subject to applicable sanctions as set forth in KRS 350.130, or any other applicable provision of law. Violations by any person conducting surface coal mining and reclamation operations or exploration operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

Section 6. Public Participation. Any person having an interest which is or may be adversely affected by a surface coal mining and reclamation operation or coal exploration operation shall have the opportunity to cause an inspection and to participate in enforcement actions of the department as provided in 405 KAR 12:030E.

Section 7. Formal Review. Any person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request review of that action by filing a request for hearing, pursuant to 405 KAR 7:090E within thirty (30) days after receiving notice of the action. The filing of a request for a hearing shall not operate as a stay of any notice or order or any modification, termination or vacation thereof.

Section 8. Review of Discretionary Actions. A permittee shall have the right of expedited review of a decision of an inspector by his supervisor when the inspector has exercised discretionary authority, other than notices or orders for violations, under Title 405, Chapters 7 through 24.

Section 9. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior

pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 12:020E. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.130, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the department to rigidly enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation sets forth various kinds of noticies and orders to be issued by authorized representatives of the department. This regulation directs that there be issued a notice of noncompliance and order for remedial measures. This regulation requires a subsequent order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period. This regulation requires the issuance of an order to abate and alleviate for situations of imminent harm. This regulation sets forth the general form of the notices, hearing and conference procedures, and various authority to vacate, modify, or amend such orders or notices. This regulation sets forth procedures for suspension or revocation of a permit and for a determination of whether a pattern of violations exists.

Section 1. General. (1) The Secretary of the Department for Natural Resources and Environmental Protection is the chief enforcement officer of the department. The secretary may from time to time or for a definite period designate by written order, or other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the regulations of Title 405, Chapters 7 through 24.

(2) Unless otherwise provided to the contrary in Title 405, Chapters 7 through 24, or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Bureau of Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the secretary for purposes of Sections 2 and 3.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the secretary shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he finds a violation of KRS Chapter 350, Title 405, Chapters 7 through 24, or any condition of a permit, or any other applicable requirement.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps, if appropriate; and

(d) A reasonable description of the portion of the surface coal mining and reclamation operation or coal exploration operation to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 4.

(4) Extension. An authorized representative of the secretary may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued. The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice.

(5) Modification. An authorized representative of the secretary may modify an order for remedial measures for good cause.

(6) Notice of compliance. An authorized representative of the secretary shall provide written notice to the person to whom a notice of noncompliance and order for remedial measures was issued when an authorized representative determines that a violation listed therein has been corrected. Such notice of complicance shall not affect the right of the department to assess civil penalties for those violations pursuant to 405 KAR 7:090E, or to impose any other applicable sanctions as authorized by law.

Section 3. Subsequent Order for Cessation and Immediate Compliance. (1) Issuance. If the person to whom a notice of noncompliance and order for remedial measures was issued fails to comply with the terms of such notice within the time for remedial action established therein, an authorized representative of the secretary shall issue to the person a subsequent order for cessation and immediate compliance as defined in 405 KAR 7:020E.

(2) Service. Service of a subsequent order for cessation and immediate compliance shall be in the manner set forth in Section 4.

(3) Affirmative obligation to comply. Upon issuance of a subsequent order for cessation and immediate compliance pursuant to this section, the person to whom such order is issued shall immediately comply with the affirmative obligations imposed by the terms of such order in the most expeditious manner possible. The person's obligation to comply with such order shall remain in effect until a notice of compliance is given to such person by an authorized representative of the department, or until other appropriate relief is granted for good cause by the department.

(4) Expiration. When a subsequent order for cessation and immediate compliance requires cessation of coal removal, that portion of such order requiring cessation of coal removal shall expire within thirty (30) days of issuance of the order unless a public hearing is held at or near the minesite within that time. Expiration of the order shall not affect the right of the department to assess appropriate

penalties and impose applicable sanctions with respect to the time period during which the order was in effect for the violations for which the order was issued.

(5) Informal public hearing:

(a) The person to whom a subsequent order for cessation and immediate compliance is issued, or any person having an interest which is or may be adversely affected, may request, or the department may on its own motion provide, an informal public hearing at or reasonably close to the minesite pursuant to Section 7 for the purpose of reviewing the subsequent order for cessation and immediate compliance.

(b) Pursuant to such review an authorized representative of the department may affirm or modify such order for good cause.

(c) Such informal public hearing shall constitute a public hearing for the purpose of subsection (4) of this section.

(d) The department shall expedite the informal public hearing upon request of the person to whom a subsequent order was issued.

(6) Notice of compliance. When an authorized representative of the department determines that a person has completed the remedial measures required by a notice of noncompliance and order for remedial measures and by the subsequent order for cessation and immediate compliance such that the violation is completely corrected, the authorized representative of the department shall provide written notice of such determination to the person. Such notice of compliance shall not affect the right of the department to assess civil penalties pursuant to 405 KAR 7:090E, or to impose any other applicable sanctions as authorized by law.

Section 4. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, subsequent order for cessation and immediate compliance, notice of compliance, and any other order of the department shall be served to the person to whom it is issued, in person or by certified mail, return receipt requested, or by registered mail; or by hand to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operation or coal exploration operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. Service by mail shall be addressed to the permanent address shown on the permit and application; or if no address is shown on the application, to such other address as is known to the department. If no person is present at the site of the operation, service by mail shall by itself be sufficient notice.

(2) Designation by any person of an agent for service of notices and orders shall be made a part of the permit application. Such person shall continue as agent for service of process until such time as written revision of the permit is made which designates another person as agent.

(3) The department may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

Section 5. Suspension or Revocation of Permits and Exploration Approvals. (1) The department shall, after hearing pursuant to 405 KAR 7:090E, suspend or revoke a permit or exploration approval upon the permittee's willful or unwarranted failure to comply with a subsequent order for cessation and immediate compliance or an abate and alleviate order.

(2) The department shall, after hearing pursuant to 405 KAR 7:090E, suspend or revoke a permit or coal exploration approval if the department determines that a pattern of violations of any requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit condition, as evidenced by the issuance of notices of noncompliance and orders for remedial measures, subsequent orders for cessation and immediate compliance, and abate and alleviate orders, exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions.

(3) The department may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

(a) The number of violations cited on more than one (1) occasion as to same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions;

(b) The number of violations, cited on more than one (1) occasion as to different requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(4) The department shall determine that a pattern of violations exists if it finds that there were violations of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions, during three (3) or more inspections of the permit area within any twelve (12) month period.

(5) (a) In determining the number of violations, the department shall consider only violations issued as a result of an inspection carried out on or after May 3, 1978.

(b) The department may consider violations issued as a result of inspections other than those mentioned in paragraph (a) of this subsection in determining whether to exercise its discretion under subsection (3) of this section.

(6) The department shall:

(a) If practicable, publish notice of the hearing, including a brief statement of the procedure for intervention in the proceeding, in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county of the surface coal mining and reclamation operations or coal exploration operation; and

(b) Post the notice at the appropriate regional office of the bureau.

(7) If the department revokes or suspends the permit or exploration approval, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(a) If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

Section 6. Informal Public Hearing at or Near the Minesite. (1) In the event that an informal public hearing is held, the following provisions shall apply:

(a) The informal public hearing shall be held at or reasonably close to the minesite so that it may be viewed during the hearing or at any other location acceptable to the department and the other parties. The appropriate

bureau regional office shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the department.

(b) The department shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

1. The person to whom the subsequent order for cessation and immediate compliance was issued; and

2. Any person who filed a report which led to that order or the original notice of noncompliance and order for remedial measures.

(c) The department shall also post notice of the informal public hearing at the appropriate bureau regional office, and publish it, where practicable in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county of the mine.

(d) An informal public hearing shall be conducted by an authorized representative of the department, who may accept oral or written arguments and other relevant information from any person attending.

(e) Within five (5) days after the close of the informal public hearing, an authorized representative of the department shall affirm or modify the subsequent order for cessation and immediate compliance in writing. Notice of the decision shall be sent to:

1. The person to whom the subsequent order for cessation and immediate compliance was issued; and

2. Any person who filed a report which led to the issuance of the notice or order.

(2) The holding of an informal public hearing shall not affect the right of any person to formal review under 405 KAR 7:090E. At such formal hearings, evidence as to statements made on evidence produced at an informal public hearing may be introduced as evidence or to impeach a witness, unless the evidence sought to be introduced would be unduly prejudicial or cause unfair surprise to any party, or when the introduction of such evidence would violate established principles of the law of evidence.

(3) The filing of a request for an informal public hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

Section 7. Orders to Abate and Alleviate. (1) The secretary or his authorized representative shall immediately order, after investigation, any person to discontinue, abate, or alleviate any condition or activity relative to a surface coal mining or reclamation operation or coal exploration operation which activity constitutes or presents a danger to the health or welfare of the people of the state or results in or is likely to result in damage to natural resources. The secretary or his authorized representative shall act pursuant to this section only when it appears that it will be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided.

(2) In accordance with subsection (1) of this section, the secretary or his authorized representative shall embody in any order pursuant to KRS 350.130(4) and 350.456(3)(d) a written finding that there is an imminent danger to the health or safety of the public or that there is a condition which causes or could reasonably be expected to cause significant, imminent environmental harm, in violation of KRS Chapter 350, the regulations of this Title, or any permit condition, such that immediate discontinuance, abatement, or alleviation is necessary to prevent such harm.

(3) The secretary or his authorized representative shall set forth affirmative obligations on the person to whom the order is issued. Where appropriate under the circumstances, the order shall specify any remedial actions that are necessary, the time within which the actions are to be taken and continued, including but not limited to, the use of existing or additional personnel and equipment. The secretary or his authorized representative shall use reasonable diligence under the circumstances to order actions deemed most expeditious for prompt discontinuance, abatement or alleviation of the harmful condition.

(4) Any order pursuant to this section may include an order to additionally show cause why the department should not suspend or revoke a permit or coal exploration approval issued pursuant to Title 405, Chapter 8, when under the circumstances such an order will improve the likelihood of rapid compliance with the order.

(5) An order issued pursuant to this section shall be in writing, signed by the person who issues it, and shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(c) The time established for abatement, if appropriate, including the time for meeting any interim steps; and

(d) A reasonable description of the portion of the surface coal mining and reclamation operation or coal exploration operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified, or terminated in writing by the secretary or his authorized representative.

(6) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(7) (a) The secretary or his authorized representative may modify, terminate or vacate an order issued pursuant to this section for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate the order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the department to assess civil penalties for those violations under 405 KAR 7:090E.

(8) (a) Within ten (10) days after the issuance of an order pursuant to this section, but as soon as practicable upon request by a permittee or operator, the secretary shall provide the person to whom the order was issued an opportunity to be heard and present proof on any issue of fact or law relevant to the order or conditions or activities giving rise to the order.

(b) The provisions of 405 KAR 7:090E shall apply, provided that subsection (a) of this section shall set the time for such a hearing.

Section 8. Inability to Comply. (1) No notice or order issued pursuant to the regulations of this Title may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:090E.

Section 9. This regulation shall become effective on the date of publication in the Federal Register of the notice of

approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 12:030E. Public participation in inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the department to rigidly enforce the law and regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. KRS Chapter 350 in pertinent part directs the department to develop regulations to allow persons who have an interest which is or may be adversely affected to participate at every significant part of the administrative process. This regulation sets forth the requirements for public participation in the inspection process. This regulation sets forth procedures for citizen requests for inspection, citizen access to the mine site during an inspection, and review by the department of inspection and enforcement decisions.

Section 1. Citizen Requests for Inspection. (1) Any person having an interest which is or may be adversely affected by a coal exploration operation or surface mining and reclamation operation may request that the department conduct an inspection by furnishing to an authorized representative of the secretary, a signed, written statement, or an oral report followed by a signed written statement, giving the authorized representative reason to believe that a violation, condition, or practice in violation of KRS Chapter 350, regulations promulgated pursuant thereto, or permit conditions exists, and setting forth a telephone number and address at which the person can be contacted.

(2) The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm shall remain confidential with the department if requested by that person, unless disclosure is required by law, or unless that person elects to accompany the inspector on the inspection.

(3) Within ten (10) days of the inspection, or if there is no inspection, within fifteen (15) days of receipt of the person's written statement, the department shall send to the person the following:

(a) If no inspection was conducted, an explanation of the reasons why no inspection was conducted;

(b) If an inspection was conducted, a description of the enforcement action taken, if any, which may consist of copies of the inspection report and all notices and orders issued as a result of the inspection or an explanation of why no enforcement action was taken; and

(c) An explanation of the person's right, if any, to admininstrative review of an authorized representative of the department, of the department's determinations and actions pursuant to inspection and enforcement.

(4) The department shall give copies of all materials in subsection (3) of this section within the time limits specified in that subsection to the person alleged to be in violation. The name of the person requesting the inspection shall be removed unless disclosure of that person's identity is permitted under subsection (2) of this section.

Section 2. Review of Decision Not to Inspect or Enforce. (1) Any person having an interest which is or may be adversely affected by a surface coal mining and reclamation operation or coal exploration operation may request the department to review an authorized representative's decision not to inspect or not to take enforcement action with respect to any violation alleged by that person in a request for inspection pursuant to this regulation. The request for a review shall be in writing and shall include a statement of how the person is or may be adversely affected and why the decision should be reviewed.

(2) An authorized representative of the department shall conduct the review and inform the person and the permittee alleged to be in violation, in writing, of the results of the review within thirty (30) days of his receipt of the request.

(3) Adminstrative review under this section shall not affect any right to formal review pursuant to 405 KAR 7:090E or other relief authorized by law.

Section 3. Citizen Requests for Minesite Access. (1) Any person requesting an inspection under Section 1 may request to accompany the authorized representative of the department during an inspection.

(2) Such person shall have a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information, provided that the person is in the presence of and is under control, direction, and supervision of the authorized representative of the department while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(3) The authorized representatives of the department shall exercise reasonable discretion in establishing the time and manner for minesite access by such peron. Nothing in this section shall be construed to place a duty of care upon the department for persons accompanying authorized representatives of the department.

(4) Any person desiring to participate in an inspection as provided in this section shall provide his own transportation to the minesite.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:010E. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.405, 350.410, 350.440, 350.445, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation contains general performance standards for maximizing coal recovery, protection of underground mining, prevention and correction of landslides, temporary cessation of operations, and permanent abandonment of operations.

Section 1. Applicability. The provisions of this chapter are applicable to all surface mining activities conducted under Title 405, Chapter 7. The provisions of this chapter also apply to those special categories of surface mining activities for which performance standards are set forth under 405 KAR 20:020E through 405 KAR 20:080E, except to the extent that a provision of those regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

Section 3. Protection of Underground Mining. (1) No surface coal mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:
(a) The nature, timing, and sequence of the operations are jointly approved by the department, the MSHA, and the Kentucky Department of Mines and Minerals; and
(b) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.
(2) Surface mining activities shall be designed to protect disturbed surface areas, including spoil disposal sites, so as not to endanger any present or future operations of either surface or underground mining activities.

Section 4. Slide and Erosion Barriers. An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for a minimum distance of fifteen (15) feet or greater distance as the department may determine is necessary to assure stability. The barrier shall be retained in place to prevent slides and erosion.

Section 5. Slides. At any time a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the department by the fastest available means and comply with any remedial measures required by the department.

Section 6. Permanent Abandonment of Operations. (1) Notice required. Not less than thirty (30) days prior to permanent abandonment of operations, the permittee shall provide written notice to the department that such abandonment is intended.
(2) Prior to abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the regulations of this Title, and the permit.
(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the department approves the retention of such equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 7. Temporary Cessation of Operations. (1) Notice required. Not less than three (3) days prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the department that such temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.
(2) Temporary cessation shall not relieve a permittee of the obligation to comply with the water quality standards and the effluent limitations of 405 KAR 16:070E and the surface and groundwater monitoring requirements of 405 KAR 16:110E, and the obligation to prevent unreasonable adverse effects upon the environment during the cessation.
(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:020E. Contemporaneous reclamation.

RELATES TO: KRS 350.062, 350.093, 350.100, 350.110, 350.405, 350.410, 350.435, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.100, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for keeping reclamation operations, including backfilling, grading, soil preparation and revegetation, comtemporaneous with mining operations.

Section 1. General. Reclamation operations, including, but not limited to, backfilling, grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, mulching and revegetation, of all land that is disturbed by surface mining activities, shall occur as contemporaneously as practicable with mining operations and in accordance with this regulation.

Section 2. Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible and in accordance with the requirements of this section, except that specific time and distance criteria set forth in the approved plan for backfilling and grading shall take precedence over corresponding criteria in this regulation. The approved backfilling and grading plan may specify time and distance criteria less restrictive than those set forth in this regulation when the permittee has demonstrated through detailed written analysis in the permit application that such other criteria are essential to the proposed mining and reclamation operations, and the department has determined that use of such criteria will not likely cause adverse environmental impacts. As used in this section, "initial surface disturbance" means the initial excavation for the purpose of removal of topsoil or overburden.

(1) Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area, and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge.

(2) Auger mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial surface disturbance at that location. Auger holes shall be sealed as required by 405 KAR 20:030E. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) days and by not more than 1500 linear feet.

(3) Contour mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial surface disturbance at that location. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1500 linear feet.

(4) Multiple-seam contour mining. When overlapping multiple cuts producing a benched highwall are made to remove more than one (1) coal seam at a given location, backfilling and grading at that location shall be completed within sixty (60) calendar days after removal of the last coal seam at that location and shall follow the advancing cut of the last coal seam by not more than 1500 feet. Removal of all coal seams shall proceed as concurrently as possible and in a timely manner, in order to minimize the time period in which disturbed areas are exposed prior to reclamation.

(5) Combined contour mining and auger mining. Coal removal by contour mining at a given location shall be completed within the time frame specified in subsection (3) or (4) of this section as appropriate. Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location. Sealing of auger holes and backfilling and grading shall then be completed as required in subsection (2) of this section.

(6) Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area.

(7) All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 3. Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching of that area shall be completed as soon as possible in a manner consistent with the approved plans for topsoil handling and revegetation and in accordance with 405 KAR 16:200E, Section 3.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) may exceed thirty (30) calendar days only when specifically authorized in the approved plans for topsoil handling and revegetation or when authorized pursuant to Sections 4 or 5.

Section 4. Time Extensions Due to Adverse Conditions. In individual cases the department may grant additional time for coal removal, backfilling and grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching, when adverse weather conditions or other conditions beyond the operator's control make it impossible to conduct such operations in a timely manner, and such conditions are appropriately documented and are successfully demonstrated to the department. However, no claim for lost time in such operations will be accepted if the operations could reasonably have been conducted at the time in question.

Section 5. Exceptions and Variances. The department may authorize in writing such exceptions and variances to the requirements of this regulation as the department may deem necessary to reasonably and properly address site-specific conditions.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:030E. Signs and markers.

RELATES TO: KRS 350.200, 350.430, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.200, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth location and informational requirements for signs and markers at mine access points, perimeters, stream buffer zones, blasting areas, and topsoil storage areas.

Section 1. Specifications. Signs and markers required under this chapter shall:
(1) Be posted and maintained by the permittee;
(2) Be of a uniform design throughout the operation that can be easily seen and read;
(3) Be made of durable material; and
(4) Conform to local ordinances and codes.

Section 2. Duration of Maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

Section 3. Mine and Permit Identification Signs. (1) Identification signs shall be displayed at each point of access to the permit areas from public roads.
(2) Signs shall show the name, business address, and telephone number of the permittee and the person, if any, who conducts the surface mining activities on behalf of the permittee and the identification number of the current permit authorizing surface mining activities.
(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

Section 4. Perimeter Markers. The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.

Section 5. Buffer Zone Markers. Buffer zones required under 405 KAR 16:060E, Section 11, shall be marked along their boundaries.

Section 6. Blasting Signs. If blasting is conducted incident to surface mining activities, the permittee shall:
(1) Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty (50) feet of any road within the permit area, or within 100 feet of any public road right-of-way.
(2) Conspicuously flag, or post within the blasting area, the immediate vacinity of charged holes as required by 405 KAR 16:120E, Section 4(3).
(3) Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning! Explosives in Use," which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.

Section 7. Topsoil Markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under 405 KAR 16:050E, Section 3, the stockpiled material shall be clearly marked.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES
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Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:040E. Casing and sealing of drilled holes.

RELATES TO: KRS 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for temporary and permanent casing, sealing or other management of drill holes, boreholes, wells, or other exposed underground openings.

Section 1. General Requirements. Each exploration hole, other drill hole or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed as approved by the department, as necessary to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the department. Use of a drilled hole or bore hole or monitoring well as a water well must meet the provisions of 405 KAR 16:060E, Section 7. This section does not apply to holes solely drilled and used for blasting.

Section 2. Temporary. Each exploration hole, other than drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the

department. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

Section 3. Permanent. When no longer needed for monitoring or other use approved by the department upon a finding of no adverse effects, or unless approved for transfer as a water well under 405 KAR 16:060E, Section 7, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the department, under Section 1 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering ground or surface waters.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:050E. Topsoil.

RELATES TO: KRS 350.062, 350.405, 350.415, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for the removal, storage and redistribution of topsoil and requirements for substitution of other materials for topsoil.

Section 1. General Requirements. (1) Before further disturbance of an area, topsoil and subsoils to be saved under Section 2 shall be separately removed and segregated from other material.

(2) After removal, topsoil shall either be immediately redistributed as required under Section 4 or stockpiled pending redistribution as required under Section 3.

(3) For surface areas which are without suitable topsoil, as a result of previous surface mining activities, the department shall approve and/or specify, on a site-specific basis, alternative practices designed to utilize those available materials which are most suitable for supporting successful revegetation. The department may require the application of nutrients and soil amendments as necessary for supporting successful revegetation.

Section 2. Removal. (1) Topsoil shall be removed from areas to be disturbed, after vegetative cover that would interfere with the use of the topsoil is cleared from those areas, but before any drilling, blasting, mining, or other surface disturbance of those areas.

(2) All topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the department in accordance with subsection (5) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(3) If the topsoil is less than six (6) inches in depth, a six (6) inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon or the A horizon and all unconsolidated material if the total available is less than six (6) inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the department pursuant to subsection (5) of this section.

(4) The B horizon and portions of the C horizon, or other underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the department determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

(5) (a) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the department determines that the resulting soil medium is equal to or more suitable for sustaining revegetation than is the available topsoil and the substitute material is the best available to support revegetation. This determination shall be based on:

1. The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the department. The department may also require field-site trials, greenhouse tests, or other demonstrations by the applicant to establish the feasibility of using these overburden materials.

2. Results of analyses, trials, and tests shall be submitted to the department. Certification of trials and tests shall be made by a laboratory approved by the department, stating that: The proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil; the substitute material is the best available material to support the vegetation; and the trials and tests were conducted using approved standard testing procedures.

(b) Substituted or supplemental overburden material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this section.

(6) Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution:

(a) The size of the area from which topsoil is removed at any one (1) time shall be limited;

(b) The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and

(c) Such other measures shall be taken as the department may approve or require to control erosion.

Section 3. Storage. (1) Topsoil and other materials removed under Section 2 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished either by:

1. An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or
2. Other methods demonstrated to and approved by the department to provide equal protection.

(b) Unless approved by the department, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

Section 4. Redistribution. (1) After final grading and before the replacement of topsoil and other materials segregated in accordance with Section 3, regraded land shall be scarified or otherwise treated as required by the department to eliminate slippage surfaces and to promote root penetration. If the permittee shows, through appropriate tests, and the department approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(2) Topsoil and other materials shall be redistributed in a manner that:

(a) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface drainage system;

(b) Prevents excess compaction of the topsoil; and

(c) Protects the topsoil from wind and water erosion before and after it is seeded and planted.

Section 5. Nutrients and soil amendments. Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of 405 KAR 16:200E. All soil tests shall be performed by a qualified laboratory using standard methods approved by the department.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:060E. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.410, 350.420, 350.421, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, protection of groundwater recharge capacity, protection of streams, and protection of water rights.

Section 1. General Requirements. (1) Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, in order to prevent long term adverse changes in that balance that could result from those activities.

(2) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;
2. Diverting runoff;
3. Achieving quickly germinating and growing stands of temporary vegetation;
4. Regulating channel velocity of water;
5. Lining drainage channels with rock or vegetation;
6. Mulching;
7. Selectively placing and sealing acid-forming and toxic-forming materials;
8. Selectively placing waste materials in bankfill areas.

(c) If the practices listed at paragraph (b) of this subsection are not adequate to meet the requirements of this chapter, the permittee shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this chapter.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) Meet the more stringent of applicable state or federal effluent limitations; and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 16:200 E, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 405 KAR 16:190E, Section 1.

(c) Retaining sediment and storm runoff within disturbed areas where practicable;

(d) Diverting runoff away from disturbed areas;

(e) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(g) Treating with chemicals.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Spoil. Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by:

(1) Identifying, burying, and treating, where necessary, spoil which the department determines, based on information in the permit application or other appropriate information, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) Preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with 405 KAR 16:190E, Section 3, and other measures as required by the department, and;

(3) Burying or otherwise treating all acid-forming or toxic-forming spoil within thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the department. Temporary storage of the spoil may be approved by the department upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Ground Water Protection. (1) Backfilled materials shall be placed so as to minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on ground water systems outside the permit area, and to support approved postmining land uses.

(2) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses.

Section 6. Protection of Ground Water Recharge Capacity. (1) Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate pre-mining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system.

(2) The recharge capacity shall be restored to a condition which:

(a) Supports the approved postmining land use;

(b) Minimizes disturbances to the prevailing hydrologic balance in the permit area and in adjacent areas; and

(c) Provides a rate of recharge that approximates the pre-mining recharge rate.

Section 7. Transfer of Wells. (1) An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the department. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the department for that approval.

(2) Upon an approved transfer of a well, the transferee shall:

(a) Assume primary liability for damages to persons or property from the well;

(b) Plug the well when necessary, but in no case later than abandonment of the well; and

(c) Assume primary responsibility for compliance with 405 KAR 16:040E with respect to the well.

(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection (2) of this section, until release of the bond or other equivalent guarantee required by Title 405, Chapter 10 for the area in which the well is located.

Section 8. Water Rights and Replacement. Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities.

Section 9. Discharge of Water Into an Underground Mine. Surface water shall not be diverted or otherwise discharged into other underground mine workings, unless the permittee demonstrates to the department that the discharge:

(1) Will abate water pollution or otherwise eliminate public hazards resulting from surface mining activities;

(2) Will be discharged as a controlled flow, meeting the effluent limitations of 405 KAR 16:070E for pH and total suspended solids, except that the pH and total suspended

solid limitations may be exceeded, if approved by the department, and is limited to:
(a) Coal processing waste;
(b) Fly ash from a coal-fired facility;
(c) Sludge from an acid mine drainage treatment facility;
(d) Flue gas desulfurization sludge; or
(e) Inert materials used for stabilizing underground mines.
(f) Underground mine development waste;
(3) Not cause or contribute to a violation of applicable water quality standards or effluent limitations due to the resulting discharge from the underground mines to surface waters (The most likely points of discharge to surface waters, if any, shall be located on a map as a part of the permit application.);
(4) Minimizes disturbances to the hydrologic balance; and
(5) Meets with the approval of the MSHA.

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of a perennial stream or a stream with a biological community determined according to subsection (3) of this section shall be disturbed by surface mining activities, unless the department specifically authorizes surface mining activities closer to or through such a stream under the following conditions:
(a) Any temporary or permanent diversions shall comply with 405 KAR 16:080E and shall be constructed prior to any disturbance of the buffer zone;
(b) That the original stream channel will be restored or relocated in a manner satisfactory to the department; and
(c) During and after the mining, the water quantity and quality from the stream section within 100 feet of the surface mining activities shall not be adversely affected.
(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 16:030E.
(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or mulluscan animals which are:
(a) Adapted to flowing water for all or part of their life cycle;
(b) Dependent upon a flowing water habitat;
(c) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and
(d) Longer than two (2) millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

Section 12. Discharges of Accumulated Water. (1) Any accumulated water to be removed from a pit, bench, or other disturbed area shall be pumped, siphoned, or otherwise conveyed in a controlled manner to a natural or constructed drainway as approved by the department.
(2) Such accumulated water may be discharged from the permit area without treatment only if the untreated discharge meetings the effluent limitations of 405 KAR 16:070E.
(3) The moving of spoil or overburden or the disturbance of the natural barrier required by 405 KAR 16:010E, Section 4, in order to release such accumulated water is prohibited, except when specifically authorized by the department.

Section 13. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:070E. Water quality standards and effluent limitations.

RELATES TO: KRS 350.020, 350.090, 350.100, 350.405, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth specific water quality standards and effluent limitations which must be met, identifies the waters to which they apply and the periods of time in which they apply, requires water treatment for sediment control, and provides certain exemptions.

Section 1. Water Quality Standards and Effluent Limitations.
(1) (a) All surface drainage from disturbed areas shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area, as required under paragraph (b) of this subsection.
(b) Sedimentation ponds and other treatment facilities shall be properly maintained and shall not be removed until backfilling, grading, topsoil redistribution, soil preparation, seeding, and mulching have been completed consistent with 405 KAR 16:020E, 405 KAR 16:050E, 405 KAR 16:190E, and 405 KAR 16:200E, and revegetation has initially met the standards for success of revegetation under 405 KAR 16:200E, on all disturbed areas in the drainage area above the sedimentation pond or other treatment facility.
(c) The department may grant exemptions from these requirements only when:
1. The disturbed drainage area is small; and
2. The permittee demonstrates that sedimentation ponds and treatment facilities are not necessary for

drainage from the disturbed drainage areas to meet the effluent limitations in Appendix A of this regulation and the applicable state and federal water quality standards for downstream receiving waters.

(d) For the purposes of this regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this Title and the upstream area is not otherwise disturbed by the person who conducts the surface mining activities.

(e) Sedimentation ponds required by this section shall be constructed in accordance with 405 KAR 16:090E, in appropriate locations before beginning any surface mining activities in the drainage area to be affected.

(f) Where sedimentation ponds are located so as to receive drainage both from disturbed areas and from other areas not disturbed by current surface coal mining and reclamation operations, the mixed drainage shall meet the effluent limitations set forth in Appendix A of this regulation, as required under paragraph (g) of this subsection, when the mixed drainage leaves the permit area.

(g) Discharges of water from areas disturbed by surface mining activities shall at all times be in compliance with all federal and state laws and regulations and, at a minimum, discharges shall meet the applicable effluent limitations of this regulation until backfilling, grading, topsoil redistribution, soil preparation, seeding, and mulching of disturbed areas have been completed as required under 405 KAR 16:020E, 405 KAR 16:050E, 405 KAR 16:190E and 405 KAR 16:200E.

(h) During and for five (5) days after a precipitation event greater than the ten (10) year, twenty-four (24) hour precipitation event, the effluent limitations of Appendix A of this regulation shall not apply to discharges of water which occur as a direct result of such event.

(2) If a sedimentation pond or treatment facility has been designed, constructed and maintained to completely contain or treat the runoff which would result from a ten (10) year, twenty-four (24) hour precipitation event without any discharge of water from the sedimentation pond or treatment facility occurring as a direct result of such runoff, then the effluent limitations of Appendix A of this regulation shall not apply to any discharge of water from such sedimentation pond or treatment facility when the discharge occurs as a direct result of a precipitation event. The permittee shall have the burden of proof of demonstrating to the department that the conditions of this exemption are met.

(3) Adequate facilities, in addition to sedimentation ponds, shall be installed, operated, and maintained to treat any water discharged from disturbed areas when necessary to ensure that the discharge complies with all federal and state laws and regulations and the limitations of this regulation. If the pH of water to be discharged from the disturbed area is less than 6.0, a neutralization process approved by the department shall be installed, operated, and maintained.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

Appendix A of 405 KAR 16:070E

Effluent Limitations, in Milligrams per Liter (mg/l, except for pH)

Effluent characteristics[1]	Maximum allowable	Average of daily values for 30 consecutive discharge days[2]
Iron, total[5]	7.0	3.5
Manganese, total[3]	4.0	2.0
Total suspended solids	70.0	35.0
pH[4]	Within range of 6.0 to 9.0	

[1] To be determined according to collection and analytical procedures adopted by the Environmental Protection Agency's regulations for wastewater analyses (40 CFR 136).

[2] Based on representative sampling.

[3] The manganese limitations shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).

[4] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the department may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0 in order that the manganese limitations will be achieved.

[5] Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to 6.0 mg/l (maximum allowable) and 3.0 mg/l (average of daily values for thirty (30) consecutive discharge days.)

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:080E. Diversions.

RELATES TO: KRS 350.085, 350.100, 350.405, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for design and construction of temporary and permanent diversions of overland flow, shallow groundwater flow, ephemeral streams, and intermittent and perennial streams.

Section 1. Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams. Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the department as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and all collection drains that are used to transport water into

water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams:

(1) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a two (2) year recurrence interval, or a larger event as specified by the department.

(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a ten (10) year recurrence interval, or a larger event as specified by the department. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the department to prevent seepage or to provide stability.

(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(4) No diversion shall be located so as to increase the potential for land slides and no diversion shall be constructed on existing land slides unless approved by the department.

(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with 405 KAR 16:050E, Sections 4 and 5, 405 KAR 16:190E, and 405 KAR 16:200E.

(6) Diversion design shall incorporate the following:

(a) Channel lining shall be designed using standard engineering practices to safely pass the design velocities. Riprap shall comply with the requirements of 405 KAR 16:130E, Section 2(2)(d), except that sand and gravel shall not be used.

(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the department, the design freeboard may be increased.

(c) Energy dissipators shall be installed, when necessary, at discharge points where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 405 KAR 16:130E.

(e) Topsoil shall be handled in compliance with 405 KAR 16:050E.

(7) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the department.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted if the diversions:

(a) Are approved by the department after making the findings called for in 405 KAR 16:060E, Section 11(1);

(b) Comply with other requirements of Title 405, Chapters 16 through 20; and

(c) Comply with applicable local, state, and federal statutes and regulations.

(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(a) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the department as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(b) The combination of channel, bank, and floodplain configurations shall be adequate to pass safely the peak runoff of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a 100-year, twenty-four (24) hour precipitation event for permanent diversions, or larger events, as specified by the department. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(3) When no longer needed to achieve the purpose for which they are authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 16:050E, Sections 4 and 5, 405 KAR 16:190E and 405 KAR 16:200E. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.

(4) When permanent diversions are constructed or stream channels restored after temporary diversions, the permittee shall:

(a) Restore, enhance where practicable, or maintain natural reparian vegetation on the banks of the stream;

(b) Establish or restore the stream to an environmentally acceptable meandering shape and gradient, as determined by the department; and

(c) Establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:090E. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds.

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:
(1) Be constructed and certified under Section 5(14) before any disturbance of the undisturbed area to be drained into the pond;
(2) Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the department;
(3) Meet all the criteria of this regulation;
(4) Be removed pursuant to Section 5(18) unless approved for retention under Section 5(19).

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a minimum sediment storage volume of 0.125 acre-feet for each acre of disturbed area within the upstream drainage area.

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond resulting from the water inflow or runoff entering the pond from a ten (10) year, twenty-four (24) hour precipitation event and lesser events shall meet the effluent limitations of Appendix A of 405 KAR 16:070E.

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the department. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.
(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this regulation shall not relieve the permittee from compliance with applicable effluent limitations as contained in 405 KAR 16:070E.
(3) There shall be no outflow through the emergency spillway during the passage through the sedimentation pond of the runoff resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events.
(4) Sediment shall be removed from sedimentation ponds when the designed sediment storage volume has filled with sediment, unless the department determines that retention of the accumulated sediment will not have a significant adverse effect upon the proper functioning of the sedimentation pond.
(5) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the department. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the department.
(6) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.
(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the department that the material used and the design will ensure against all settlement.
(8) The minimum top width of the embankment shall not be less than the quotient of $(H + 35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.
(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.
(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.
(12) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this regulation. Compaction shall be conducted as specified in the design approved by the department.
(13) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:
(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, twenty-four (24) hour precipitation event, or a larger event specified by the department.
(b) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the department to ensure stability.
(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.
(d) The criteria of the MSHA as published in 30 CFR 77.216 shall be met.
(14) Each pond shall be designed by a registered professional engineer; shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer; and after construction shall be cer-

tified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with 405 KAR 16:190E, Section 6.

(16) All ponds, meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports and modifications shall be made to the department, in accordance with 30 CFR 77.216-3. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined as required by the department.

(17) Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 16:070E, Section 1(1)(b), have been met.

(18) Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the department under subsection (19) of this section. When a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 16:190E and 405 KAR 16:200E.

(19) If the department approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 16:060E, Section 10 and 405 KAR 16:100E.

(20) Notwithstanding other provisions of this regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B—moderate hazard or Class C—high hazard, shall comply with 405 KAR 7:040E, Section 6 and with 401 KAR 4:030.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:100E. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.420, 350.455, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation.

Section 1. General. (1) Permanent impoundments are prohibited unless authorized by the department, upon the basis of the following demonstration:

(a) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws.

(b) The level of water shall be sufficiently stable to support the intended use.

(c) Adequate safety and access to the impounded water shall be provided for proposed water users.

(d) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(e) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, PL 83-566 (16 USC 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in the U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs," June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds," October 1978.

(f) The size of the impoundment is adequate for its intended purposes.

(g) The impoundment will be suitable for its intended purposes and will be consistent with the approved postmining land use.

(2) Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of 405 KAR 16:090E, Section 5.

(3) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h. Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

(4) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

Section 2. Dams and Embankments. (1) All dams and embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of 405 KAR 16:200E immediately after the dam or embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to

comply with the requirements of 405 KAR 16:190E, Section 6 and 405 KAR 16:200E.

(2) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered engineer, in accordance with 30 CFR 77.216-3

(3) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(4) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the department by a qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and/or maintained to comply with the requirements of this regulation. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by a qualified registered professional engineer. Certification reports shall include statements on:

(a) Existing and required monitoring procedures and instrumentation;

(b) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(c) Existing storage capacity of the dam or embankment;

(d) Any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and

(e) Any other aspects of the dam or embankment affecting stability.

(5) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the department and shall comply with the requirements of this regulation. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the department shall approve the plans before modification begins.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:110E. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465,
PURSUANT TO: KRS 13.082, 350.028, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. Ground Water. (1) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department, to determine the effects of surface mining activities on the on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit area and adjacent areas.

(2) When surface mining activities may affect the ground water systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities if necessary to minimize di turbance of the prevailing hydrologic balance.

(3) As specified and approved by the department, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests and shall submit the results to the department, to demonstrate compliance with 405 KAR 16:060E, Sections 5 and 6, and this regulation.

Section 2. Surface Water. (1) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:030E, Section 32(2)(d) and approved by the department. The department shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:

(a) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;

(b) In all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee notifying the department within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has oc-

curred, the permittee shall forward the analytic results concurrently with the written notice of noncompliance;

(c) Result in quarterly reports to the department, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the department. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the department on the same time schedule as required by the NPDES permit, or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.

(2) Surface water flow and quality shall continue to be monitored as long as the effluent limitations of 405 KAR 16:070E, Section 1(1)(g) are applicable, or such additional period as is necessary to demonstrate achievement of the postmining land use capability.

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:120E. Use of explosives.

RELATES TO: KRS 350.430
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth specific requirements for the use of explosives for surface blasting, including qualified supervision of blasting, preblasting surveys, blasting schedules, warning signals, restrictions on timing and location of blasting, limitations on airblast and ground vibration, seismographic measurements, and records of blasting operations.

Section 1. General Requirements. (1) Each permittee and person who conducts blasting operations shall comply with all applicable state and federal laws in the use of explosives.

(2) Blasts that use more than five (5) pounds of explosive or blasting agent shall be conducted according to the schedule required by Section 3.

(3) All blasting operations shall be conducted, under the supervision of a certified blaster licensed by the Kentucky Department of Mines and Minerals, by experienced, trained, and competent persons who understand the hazards involved.

Section 2. Preblasting Survey. (1) On the request to the department by a resident or owner of a dwelling or structure that is located within one-half (½) mile of any part of the permit area, the permittee shall promptly conduct a preblast survey of the dwelling or structure. If a structure is renovated or added to, subsequent to a preblast survey, then upon request to the department, a survey of such additions and renovations shall be performed in accordance with this section.

(2) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. If the resident or owner or his representative accompanies the surveyor, the report shall contain the name of such person. Copies of the report shall be provided to the person requesting the survey and, upon request, to the department. If the person requesting the survey disagrees with the results of the survey within thirty (30) days of receipt of the survey, he or she shall notify, in writing, both the permittee and the department of the specific areas of disagreement.

Section 3. Public Notice of Blasting Schedule. (1) Blasting schedule publication:

(a) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days, before beginning a blasting program in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(b) Copies of the schedule shall be distributed by mail to local governments and public utilities and by mail or delivered to each residence within one-half (½) mile of the permit area described in the schedule. For the purposes of this section, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and

coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences shall be accompanied by information advising the owner or resident how to request a preblasting survey.

(c) The permittee shall republish and redistribute the schedule by mail at least every twelve (12) months.

(2) Blasting schedule contents:

(a) A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

(b) The blasting schedule shall contain at a minimum:

1. Identification of the specific areas in which blasting will take place. Each specific blasting area described shall be reasonably compact and not larger than 300 acres;

2. Dates and time periods when explosives are to be detonated. These periods shall not be less than one (1) hour each and shall not exceed an aggregate of four (4) hours in any one (1) day;

3. Methods to be used to control access to the blasting area;

4. Types of audible warnings and all-clear signals to be used before and after blasting; and

5. A description of unavoidable hazardous situations referred to in Section 4(2) which have been approved by the department for blasting at times other than those described in the schedule.

(3) Public notice of changes to blasting schedules.

(a) Before blasting in areas or at times not in a previous schedule, the permittee shall prepare a revised blasting schedule according to the procedures in subsections (1) and (2) of this section. Where notice has previously been mailed to the owner or residents under subsection (1)(b) of this section with advice on requesting a preblast survey, the notice of change need not include information regarding preblast surveys.

(b) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the department may require that the permittee prepare a revised blasting schedule according to the procedures in paragraph (a) of this subsection.

Section 4. Surface Blasting Requirements. (1) All blasting shall be conducted between sunrise and sunset.

(a) The department may specify more restrictive time periods, based on public requests or other relevant information according to the need to adequately protect the public from adverse noise.

(b) Blasting may, however, be conducted between sunset and sunrise if:

1. A blast that has been prepared during the day must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated; and

2. In addition to the required warning signals, oral notices are provided to persons within one-half (½) mile of the blasting site; and

3. A complete written report of blasting at night is filed by the permittee with the department not later than three (3) days after the night blasting, not including Saturdays, Sundays, or legal holidays. The report shall include a description in detail of the reason for the delay in blasting including why the blasting could not be held over to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by Section 6.

(2) Blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the department in the permit application, where operator or public safety require unscheduled detonation.

(3) Warning and all-clear signals of different character that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (½) mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated to such persons in a manner which can reasonably be expected to inform such persons of the meaning of the signals. Delivery or other appropriate communication of the instructions to a head of household or to the person in charge of a place of business shall constitute sufficient communication of such instructions to all persons at such household or place of business. Each permittee shall maintain signs in accordance with 405 KAR 16:030E, Section 6.

(4) Access to an area subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting until an authorized representative of the permittee has reasonably determined:

(a) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(b) That access to and travel in or through the area can be safely resumed.

(5) (a) Airblast shall be controlled so that it does not exceed the values specified in Appendix A of this regulation at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the permittee from meeting the airblast limitations of this subsection.

(b) In all cases except the C-weighted, slow response, the measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S1.4 1971 specifications.

(c) The permittee may satisfy the provisions of this section by meeting any one (1) of the four (4) specifications in the chart in Appendix A of this regulation.

(d) The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(6) Except where lesser distances are approved by the department, based upon a preblasting survey, seismic investigations, or other appropriate investigations, blasting shall not be conducted within:

(a) 300 feet of any building used as a dwelling, school, church, hospital, or nursing facility; or

(b) 300 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(7) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the area of regulated access required under subsection (4) of this section.

(8) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(9) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed two (2) inches per second at the location of any dwelling, public building, school, church, or commercial or institutional building. The maximum peak particle velocity shall be recorded as either the largest of the peak particle velocities measured in three (3) mutually perpendicular directions, or the vector sum thereof. The department may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(10) Provided that blasting is conducted in such manner as to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of this section shall not apply at the following locations:

(a) At structures owned by the permittee or the person conducting the blasting operation, and not leased to another party; and

(b) At structures owned by the permittee or the person conducting the blasting operation, and leased to another party, if a written waiver by the lessee is submitted to the department prior to blasting.

(11) An equation for determining the maximum weight of explosives that can be detonated within any eight (8) millisecond period is in Appendix B of this regulation. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the two (2) inches-per-second limit.

Section 5. Seismographic Measurements. (1) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of two (2) inches per second is not exceeded, the equation in Appendix B of this regulation need not be used. If that equation is not used, a seismographic record shall be obtained for each shot.

(2) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the department approve the use of a modified equation where the peak particle velocity of two (2) inches per second required in Section 4(9) would be exceeded.

(3) The department may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

Section 6. Records of Blasting Operations. A record of each blast, including any required seismograph reports, shall be retained for at least three (3) years and shall be available for inspection by the department and the public on request. The record shall contain the following data:

(1) Name of the person conducting the blasting operations.

(2) Location, date, and time of blast.

(3) Name, signature, and license number of blaster-in-charge.

(4) Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either:

(a) Not located in the permit area; or

(b) Not owned nor leased by the permittee.

(5) Weather conditions, including temperature, wind direction, and approximate velocity.

(6) Type of material blasted.

(7) Number of holes, burden, and spacing.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used.

(11) Maximum weight of explosives detonated within any eight (8) millisecond period.

(12) Maximum number of holes detonated within any eight (8) millisecond period.

(13) Initiation system.

(14) Type and length of stemming.

(15) Mats or other protections used.

(16) Type of delay detonator and delay periods used.

(17) Sketch of the delay pattern.

(18) Number of persons in the blasting crew.

(19) Seismographic records, where required, including the calibration signal of the gain setting and:

(a) Seismograph reading, including exact location of seismograph and its distance from the blast;

(b) Name of the person taking the seismograph reading; and

(c) Name of person and firm analyzing the seismograph record.

Section 7. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

Appendix A of 405 KAR 16:120E

Airblast Limitations

Lower frequency limit of measuring system, Hz (+ or - 3dB)	Maximum level in dB
0.1 Hz or lower—flat response	135 peak
2 Hz or lower—flat response	132 peak
6 Hz or lower—flat response	130 peak
C-weighted, slow response	109 C.

Appendix B of 405 KAR 16:120E

Maximum Weight of Explosives to be Detonated Within Any Eight (8) Millisecond Period

$$W = (D/50)^2$$

where W = the maximum weight of explosives, in pounds, that can be detonated in any eight (8) millisecond period

D = the distance, in feet, from the blast to the nearest dwelling, school, church or commercial or institutional building

For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance in Feet (D)	Maximum Weight in Pounds (W)
300	36
350	49
400	64
500	100
600	144
700	196
800	256
900	324
1,000	400
1,100	484
1,200	576
1,300	676
1,400	784
1,500	900
1,600	1,024
1,700	1,156
1,800	1,296
1,900	1,444
2,000	1,600
2,500	2,500
3,000	3,600
3,500	4,900
4,000	6,400
4,500	8,100
5,000	10,000

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:130E. Disposal of excess spoil.

RELATES TO: KRS 350.090, 350.410, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth specific requirements for the location of areas used for the disposal of excess spoil materials and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be transported and placed in designated disposal areas within a permit area in a manner approved by the department. The spoil shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of 405 KAR 16:070E;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(3) Vegetative and organic materials shall, either progressively or in a single operation, be removed from the disposal area and the topsoil shall be removed, segregated and stored or replaced under 405 KAR 16:050E. If approved by the department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 16:080E, Section 1. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the department. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.5. For fills of less than 250,000 cubic yards volume located in remote areas where minor rotational failure would not endanger life or property, the department may approve a long term static safety factor of 1.3 for rotational failure. However, for such fills, the long term factor of safety against sliding of the fill mass shall be not less than 1.5

(7) The final configuration of the fill must be suitable for proposed postmining land uses approved in accordance with 405 KAR 16:210E, except that no significant depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department and consistent with 405 KAR 16:190E, Section 2(2).

(9) Where the natural land slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability

analyses shall be performed in accordance with 405 KAR 8:030E, Section 27(3), to determine the size of the rock toe buttresses and key way cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction, and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials, and revegetation. The responsible registered professional engineer shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the minesite.

(11) Coal processing waste shall not be disposed of in head-of-hollow or valley fills with excess spoil or underground development waste, and may only be disposed of with underground development waste or excess spoil in other fills if such waste is:

(a) Placed in accordance with 405 KAR 16:140E, Section 4.

(b) Demonstrated to be non-toxic and non-acid forming; and

(c) Demonstrated to have no adverse effect upon the stability of the fill.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and MSHA upon the basis of a plan submitted under 405 KAR 8:040E, Section 27.

Section 2. Valley Fills and Head-of-Hollow Fills. Disposal of excess spoil in valley fills and head-of-hollow fills shall meet all requirements of Section 1 and the additional requirements of this section, except as provided in Sections 3 and 4.

(1) The fill shall be designed to attain a long-term static factor of safety of 1.5, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates through detailed engineering analysis to the satisfaction of the department that a smaller drain will provide adequate long term capacity for drainage at the site.

(d) Underdrain shall consist of nondegradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale.

(3) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than four (4) feet.

(a) The department may require lifts of less than four (4) feet in order to:

1. Achieve the densities designed to ensure mass stability;
2. Prevent mass movement;
3. Avoid contamination of the rock underdrain or rock core; and
4. Prevent formation of voids.

(b) The department may approve lifts of greater than four (4) feet, or alternate methods of placement, if the permittee demonstrates through appropriate engineering analysis in the permit application to the department's satisfaction that the provisions of subparagraphs 1 through 4 of paragraph (a) of this subsection will be met.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from the 100-year, twenty-four (24) hour precipitation event or larger event specified by the department. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 16:080E, Section 1(6).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

Section 3. Rock Core Chimney Drains. (1) A rock core chimney drain may be utilized as provided in this section instead of the subdrain and surface runoff diversion system required under Section 2(2) and (4), for:

(a) All head-of-hollow fills; and

(b) All valley fills associated with contour mining and placed at or near the coal seam, which do not exceed 250,000 cubic yards in volume.

(2) The rock core chimney drain shall be designed and constructed as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from

the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 2(2).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain runoff from the fill surface away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3) percent). Notwithstanding the requirement of Section 1(7), prohibiting depressions and impoundments, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept runoff from the fill surface and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. The drainage pocket and rock core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill. In no case shall this drainage pocket have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of safely passing the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the department.

Section 4. Hard Rock Spoil. (1) In lieu of the requirements of Section 2, the department may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and Section 1 are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department.

(2) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the department.

(3) (a) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including necessary borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on appropriate records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) When necessary to ensure proper long-term functioning of the internal drainage system, the internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 16:080E, Section 1(6).

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 16:080E, Section 1(6).

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved post-mining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 5. Disposal on Existing Benches. The department may approve the disposal of excess spoil on benches created by surface coal mining operations conducted prior to May 3, 1978. Such spoil shall be disposed of in accordance with the backfilling and grading requirements of 405 KAR 16:190E, Section 2, in lieu of the requirements of this regulation.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

Appendix A of 405 KAR 16:130E

Minimum Drain Size

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd³	Sandstone	10	4
Do.	Shale	16	8
More than 1,000,000 yd³	Sandstone	16	8
Do.	Shale	16	16

Appendix B of 405 KAR 16:130E

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:140E. Disposal of coal processing waste.

RELATES TO: KRS 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for the disposal of coal processing waste, including design and construction requirements for coal processing waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal processing waste to underground mine workings.

Section 1. General Requirements. (1) All coal processing waste to be disposed of on the permit area shall be transported and placed in a manner approved by the department in disposal areas approved by the department for this purpose. The disposal area shall be designed, constructed and maintained:

(a) In accordance with 405 KAR 16:130E, Sections 1 and 2, and this regulation; and

(b) To prevent combustion.

(2) Coal processing waste materials from activities located outside the permit area, such as those activities at other mines or abandoned mine waste banks, may be disposed of in the permit area only if approved by the department. Approval shall be based on a showing by the permittee, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of these materials does not:

(a) Adversely affect water quality, water flow, or vegetation;

(b) Create public health hazards; or

(c) Cause instability in the disposal areas.

Section 2. Site Inspection. (1) All coal processing waste banks shall be inspected on behalf of the permittee by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer.

(a) Inspections shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The department may require more frequent inspections based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Section 4, topsoil has been distributed on the bank in accordance with 405 KAR 16:050E, Section 4, or at such a later time as the department may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 405 KAR 8:030E, Section 34, and approved by the department.

(c) The engineer shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(d) Copies of the inspection findings shall be maintained at the mine site.

(2) If any inspection discloses that a potential hazard exists, the department shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department shall be notified immediately. The department shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

Section 3. Water Control Measures. (1) Except where the department approves alternative practices which ensure structural integrity of the waste bank and protection of ground and surface water quality, a properly designed subdrainage system shall be provided, which shall:

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(2) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with 405 KAR 16:130E, Section 2(4).

(3) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(4) All water discharged from a coal processing waste bank shall comply with 405 KAR 16:060E, Sections 1, 2 and 9, 405 KAR 16:070E, 405 KAR 16:090E, 405 KAR 16:110E.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 16:130E, Sections 1 and 2, except to the ex-

tent the requirements of those sections are varied in this section.

(2) Coal processing waste banks shall have a minimum static factor of safety of 1.5.

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this subsection, instead of those specified in 405 KAR 16:130E, Section 2(3). The coal processing waste shall be:

(a) Spread in horizontal layers no more than twenty-four (24) inches in thickness; and

(b) Compacted to attain ninety (90) percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99-74 (Twelfth Edition) (July 1978) or an equivalent method.

(c) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus twenty-eight (28) sieve size) with approval of the department.

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with 405 KAR 16:050E, Section 2(5), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with 405 KAR 16:200E. The department may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of 405 KAR 16:200E will be met.

Section 5. Burning Coal Waste. Coal processing waste fires shall be extinguished by the permittee in accordance with a plan approved by the department and the MSHA. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the permittee and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

Section 6. Burned Waste Utilization. Before any burned coal processing waste or other material or refuse is removed from a permitted disposal area, approval shall be obtained from the department. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and methods of compliance with this chapter, shall be submitted to the department. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the disposal area. The plan shall be certified by a qualified registered professional engineer.

Section 7. Return to Underground Workings. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the department and MSHA under 405 KAR 8:040E, Section 27.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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APPROVED: JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:150E. Disposal of waste other than coal processing waste, soil or rock.

RELATES TO: KRS 350.020, 350.090, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for the storage and disposal of wastes other than coal processing waste, soil or rock.

Section 1. Storage and Disposal. (1) Storage. Wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Disposal. Final disposal of such wastes shall be in a designated disposal site in the permit area or other appropriate disposal areas approved by the department. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 405 KAR 16:200E. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(3) At no time shall any such waste material be deposited at coal processing waste banks, dams or impoundments, nor shall any such excavation for waste disposal be located within eight (8) feet of any coal outcrop or coal storage area.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior

pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:160E. Coal processing waste dams and impoundments.

RELATES TO: KRS 350.425
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth specific design and construction requirements for existing and new dams or embankments which are constructed of coal processing waste or will impound coal processing waste.

Section 1. General Requirements. (1) This regulation applies to dams and impoundments, constructed of coal processing waste or intended to impound coal processing waste, whether they were completed before the effective date of this regulation or are intended to be completed thereafter.

(2) Waste shall not be used in the construction of dams and impoundments unless it has been demonstrated to the department that the stability of such a structure conforms with the requirements of Section 3(1). It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or impoundment. All demonstrations shall be submitted to and approved by the department.

Section 2. Site Preparation. Before coal processing waste is placed at a dam or impoundment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustible materials shall be removed and disposed of or stockpiled in accordance with the requirements of this chapter; and

(2) Surface drainage that may cause erosion to the dam or the impoundment features, whether during construction or after completion, shall be diverted away from the dam or impoundment by diversion ditches that comply with the requirements of 405 KAR 16:080E, Section 1. Adequate outlets for discharge from these diversions shall be in accordance with 405 KAR 16:060E, Section 3. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak runoff from a 100-year, twenty-four (24) hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharges shall be in accordance with 405 KAR 16:060E, Section 3.

Section 3. Design and Construction. (1) The design of each dam and impoundment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of 405 KAR 16:100E, Sections 1(1)(e) and 2, modified as follows:

(a) The design freeboard between the lowest point on the dam or impoundment crest and the maximum water elevation shall be at least three (3) feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. Soil Conservation Service criteria referenced in 405 KAR 16:100E.

(b) The dam or impoundment shall have a minimum safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2.

(c) The dam or impoundment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or impoundment for all loading conditions appearing in paragraph (b) of this subsection or the publications referred to in 405 KAR 16:100E, and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or impoundments constructed of or impounding waste materials shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event shall be removed within a ten (10) day period.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:170E. Air resources protection.

RELATES TO: KRS 224.033, 350.020, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for the control and monitoring of air pollution from surface mining activities, with specific measures for the control of fugitive dust.

Section 1. Fugitive Dust Control. Each permittee shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations.

Section 2. Control Measures. The fugitive dust control measures to be used shall include, as necessary, but not be limited to:

(1) Periodic watering of unpaved roads;

(2) Chemical stabilization of unpaved roads with proper application of non-toxic soil cements or dust palliatives;

(3) Paving of roads;

(4) Prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;

(5) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;

(6) Restricting the travel of vehicles on other than established roads;

(7) Minimizing the area of disturbed land;

(8) Prompt revegetation or other stabilization of disturbed lands;

(9) Planting of special windbreak vegetation at critical points in the permit area.

Section 3. Additional Measures. Where the department determines the application of fugitive dust control measures listed in Section 2 is inadequate, the department may require additional measures and practices as necessary.

Section 4. Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air quality monitoring plan if required under 405 KAR 8:030E, Section 35, and approved by the department.

Section 5. Each permittee shall comply with all applicable requirements of KAR Title 401, Chapters 50 through 65.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:180E. Protection of fish, wildlife and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.405, 350.435, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values and the enhancement of such resources where practicable.

Section 1. Protection of Fish, Wildlife, and Related Environmental Values. (1) Any permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(2) A permittee shall promptly report to the department the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the department by that person.

(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the department. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the department.

(4) Each permittee shall to the extent possible using the best technology currently available:

(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(b) Fence roadways where specified by the department to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;

(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(d) Restore, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife;

(e) Restore, enhance where practicable, or maintain natural reparian vegetation on the banks of streams, lakes, and other wetland areas;

(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 16:060E,

Section 11 or restoring stream channels as required in 405 KAR 16:080E, Section 2.

(g) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the department.

(h) To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the department as part of a management plan.

(i) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of 405 KAR 16:200E:

1. Select plant species to be used on reclaimed areas, based on the following criteria: their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds; and

2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(j) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use, and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types of birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(k) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:190E. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.405, 350.410, 360.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for backfilling and grading, including requirements for highwall elimination, return to approximate original contour, timing of backfilling and grading, use of terraces, thick and thin overburden conditions, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. General Requirements. (1) Timing of backfilling and grading. Backfilling and grading shall be conducted in accordance with the requirements for contemporaneous reclamation as set forth in 405 KAR 16:020E.

(2) Method for backfilling and grading:

(a) Except as specifically exempted in Title 405, Chapters 16 through 20, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize offsite effects, and to support the approved postmining land use.

(c) The postmining graded slopes need not be of uniform slope.

(d) Cut-and-fill terraces may be used only in those situations expressly identified in Section 2.

Section 2. General Grading Requirements. (1) The final graded slopes shall not exceed slopes approved by the department based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. The requirements of this section and Section 1(2)(a) may be modified by the department where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of this chapter and sufficient spoil is not available to otherwise comply with this section. However, the permittee shall, at a minimum:

(a) Retain all overburden and spoil on the solid portion of existing or new benches; and

(b) Backfill and grade to the most moderate slope possible, to eliminate any newly created highwall and those portions of existing highwalls that are substantially disturbed. The slope shall not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3.

(2) On approval by the department in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the department as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the department, to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved, if they have a

minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only when approved by the department.

(3) Small depressions may be constructed, if they:

(a) Are approved by the department to minimize erosion, conserve soil moisture, or promote vegetation;

(b) Do not restrict normal access; and

(c) Are not inappropriate substitutes for lower grades on the reclaimed lands.

(4) All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the department defines as steep slopes shall meet the provisions of 405 KAR 20:060E.

(5) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

Section 3. Covering Coal and Acid- and Toxic-forming Materials. (1) Cover:

(a) The permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and non-combustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, and other materials identified by the department as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land use.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the department shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from ground water contact.

(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to ensure the stability of backfilled materials. The method and design specifications of compacting material shall be approved by the department before acid-forming and toxic-forming materials are covered.

Section 4. Thin Overburden. (1) The provisions of this section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 1 to achieve the approximate original contour.

(2) In surface mining activities carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials.

(b) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or such lesser slopes as the department may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(c) Transport, backfill, grade, and revegetate in accordance with 405 KAR 16:200E, to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area; and

(d) Transport, backfill, and grade, to ensure impoundments are constructed only where:

1. It has been demonstrated to the department's satisfaction that all requirements of 405 KAR 16:060E, Sections 1 through 10, 405 KAR 16:070E, 405 KAR 16:080E, 405 KAR 16:090E, 405 KAR 16:100E and 405 KAR 16:110E have been met; and

2. The impoundments have been approved by the department as suitable for the approved postmining land use and as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

Section 5. Thick Overburden. (1) The provisions of this section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 1 to achieve the approximate original contour.

(2) In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(b) Transport, backfill and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with 405 KAR 16:130E.

(c) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 405 KAR 16:060E, 405 KAR 16:070E, 405 KAR 16:080E, 405 KAR 16:090E, 405 KAR 16:100E and 405 KAR 16:110E and to provide long-term stability by preventing slides, erosion and water pollution.

(d) Transport, backfill, grade, and revegetate wastes and

excess spoil to achieve an ecologically sound land use approved by the department as compatible with the prevailing land uses in unmined areas surrounding the permit area.

(e) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(f) Meet the revegetation requirements of 405 KAR 16:200E for all disturbed areas.

Section 6. Regrading or stabilizing rills and gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to 405 KAR 16:200E. The department may specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted, if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 7. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:200E. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.420, 350.435, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for revegetation of areas affected by surface mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1) Each permittee shall establish on all affected land a diverse, effective and permanent vegetative cover of the same seasonal variety native to the region or species that supports the approved postmining land use. For areas designated as prime farmland, the requirements of 405 KAR 20:040E shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 8:030E, Sections 24(4) and 37 as approved by the department and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(a) All disturbed land, except water areas and surface areas of roads that are approved as a part of the postmining land use, and other small incidental areas related to the fulfillment of the postmining land use plan subject to approval by the department, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region.

(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(c) Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year.

(d) If both the premining and the postmining land uses are cropland, successful establishment of the crops normally grown will meet the requirements of paragraph (a), (b) and (c) of this subsection.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the department under the following conditions:

(1) The species are compatible with the plant and animal species of the region;

(2) The species meet the requirements of applicable state and federal seed or introduced species statutes, and are not poisonous or noxious; and

(3) (a) After appropriate field trials or other demonstrations or studies satisfactory to the department have shown that the introduced species, if proposed as the permanent vegetation, can establish an effective, and permanent cover compatible with the vegetation on surrounding areas and compatible with the approved postmining land use; or

(b) The species are necessary to achieve a quick, temporary and stabilizing cover that aids in controlling erosion, and measures to establish permanent vegetation are included in the approved plan submitted under 405 KAR 8:030E, Sections 24(4)(c) and 37.

(4) The department may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation, or to be more effective in achieving the approved postmining land use.

Section 3. Timing. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally or as established by the department for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable, with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Mulching and Other Soil Stabilizing Practices. (1) Suitable mulch or other soil stabilizing practices

shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, or to increase the moisture retention capacity of the soil. The department may, on a case-by-case basis, suspend the requirement for mulch if the department finds that alternative procedures proposed by the permittee will achieve the requirements of Section 6 and do not cause or contribute to air or water pollution.

(2) When required by the department, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(3) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch when the department determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(4) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the department approximately equal to that for similar non-mined lands, for at least the last two (2) full years of liability required under Section 6(2) or by other appropriate demonstration approved by the department.

Section 6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the department after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas, or through the use of technical guidance procedures published by USDA or USDI or other procedures approved by the department for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.

(2) (a) Ground cover and productivity of living plants on the revegetated area within the permit area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the department. Groundcover and productivity shall equal the approved standard for the last two (2) consecutive years of the responsibility period.

(b) Except as provided in paragraph (c)3 of this subsection, the period of extended responsibility under the performance bond requirements of Title 405, Chapter 10 begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation, and continues for not less than five (5) years.

(c) The ground cover and productivity of the revegetated area shall be considered equal, if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands; or ground cover and productivity are at least ninety (90) percent of the standards in a technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the department under the following standards:

1. For previously mined areas that were not reclaimed to the requirements of Title 405, Chapters 16 through 20, the ground cover of living plants shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion;

2. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than the department determines to be necessary to control erosion; and

3. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to the approved reference areas or other approved technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two (2) consecutive growing seasons of the five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable five (5) year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the department that the initial planting of the crop has been completed. Promptly thereafter, the department shall inspect the area to verify that the initial planting has been completed.

4. On areas to be developed for fish and wildlife management or forestland, successive vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub or half-shrub, stocking shall meet the standards described in Section 7. The area seeded to a ground cover shall be considered acceptable if it is at least seventy (70) percent of the ground cover of the reference areas with ninety (90) percent statistical confidence or if the ground cover is determined to be adequate to control erosion by the department. This subsection shall determine the responsibility period and the frequency of ground cover measurement.

(3) The permittee shall:

(a) Maintain any necessary fences and proper management practices; and

(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the department, to identify conditions during the applicable period of liability specified in subsection (2) of this section.

(4) For permit areas forty (40) acres or less in size, the following performance standards, if approved by the department, may be used to measure success of revegetation on sites that are disturbed.

(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability.

(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability and 400 woody plants per acre at the end of the five (5) years. On steep slopes, the minimum number of woody plants shall be 600 per acre.

(5) For the purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; woody plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

Section 7. Tree and Shrub Stocking. This section sets forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of available growing space, is established after surface mining activities.

(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well distributed countable trees, shrubs or half-shrubs.

(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

1. The tree or shrub shall be in place at least two (2) growing seasons;
2. The tree or shrub shall be alive and healthy; and
3. The tree or shrub shall have at least one-third (⅓) of its length in live crown.

(c) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require stocking.

(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.

(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species.

(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c) and this subsection, and the sampling method approved by the department.

(d) Upon expiration of the five (5) year responsibility period and at the time of request for bond release each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy Section 6(2)(c)4 and this subsection.

(3) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(a) The stocking of trees, shrubs, half-shrubs, and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area or shall approximate the stocking and ground cover as approved in the mining and reclamation plan as appropriate for the approved postmining land use.

(b) Where a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the department. This inventory shall contain but not be limited to:

1. Site quality;
2. Stand size;
3. Stand condition;
4. Site and species relations; and
5. Appropriate forest land utilization considerations.

(c) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:

1. The woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan with eighty (80) percent statistical confidence; and
2. The ground cover on the revegetated area satisfies Section 6(2)(c)4. Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

Section 8. Planting Report. Prior to, or simultaneously with, the submittal of an application for the initial bond release on an area, the permittee shall file a certified planting report with the department, on a form prescribed and furnished by the department, giving the following information:

(1) Identification of the operation;
(2) The type of planting or seeding, including mixtures and amounts;
(3) The date of planting or seeding;
(4) The area of land planted; and
(5) Such other relevant information as the department may require.

Section 9. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:210E. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for restoring land use capability after completion of surface 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 department under Section 4.

Section 2. 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 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. 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 4. Alternative Postmining Land Use. Alternative postmining land uses may be approved by the department 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 department within sixty (60) days of notice by the department.

(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 surface mining activities.

(2) Specific plans are prepared and submitted to the department which show the feasibility of the postmining land use as related to projected land use trends and markets, and which include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining. The department 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 department 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 department, and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan before surface mining activities begin.

(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, have been reviewed by the department 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 Title 405, Chapter 10, 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.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:220E. Roads.

RELATES TO: KRS 350.020, 350.028, 350.085, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth requirements for the location, design, construction, maintenance, and removal or permanent retention of roads and associated drainage structures.

Section 1. General. (1) Each permittee shall design, construct or reconstruct, utilize, and maintain roads and restore the area to meet the requirements of this regulation and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) The design and construction or reconstruction of roads shall be certified by a qualified registered professional engineer as being in accordance with Sections 2 through 5, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the department upon a demonstration by a qualified registered professional engineer that they will result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from roads complying with the specifications of this regulation.

(4) All roads shall be removed and the affected land regraded and revegetated in accordance with the requirements of Section 7 unless:

(a) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) The necessary maintenance is assured; and

(c) All drainage is controlled according to Section 4.

Section 2. Location. (1) Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the department.

(3) Stream fords are prohibited unless they are specifically approved by the department as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 4.

Section 3. Design and Construction. Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) The roadway width shall be appropriate for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used.

(2) Vertical alinement. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The maximum pitch grade shall not exceed lv:6.5h (fifteen (15) percent).

(b) There shall be not more than 300 feet of pitch grade exceeding ten (10) percent within any consecutive 1,000 feet of road.

(3) Horizontal alinement. Roads shall have horizontal alinement as consistent with the existing topography as possible, and shall provide the alinement required to meet the performance standards of this regulation. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(4) Temporary erosion control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(5) Excess or unsuitable material from excavations shall be disposed of in accordance with 405 KAR 16:060E, Section 4; 405 KAR 16:140E, Section 1; 405 KAR 16:190E, Section 3.

(6) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(7) Road cuts:

(a) Cut slopes shall not be steeper than specifically authorized by the department, and shall not be steeper than lv:1.5h in unconsolidated materials or lv:0.25h in rock, except that steeper slopes may be specifically authorized by the department if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(b) All cut slopes except solid rock cut slopes shall be revegetated as soon as possible to minimize erosion.

(8) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any road embankment.

(b) Where an embankment is to be placed on side slopes exceeding lv:5h (twenty (20) percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of ten (10) feet in width and shall extend a minimum of two (2) feet below the toe of the fill.

(c) Embankment shall be placed in horizontal layers and shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used, In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used.

(d) Embankment slopes shall not be steeper than lv:2h, except that where the embankment material is a minimum of eighty-five (85) percent rock, slopes shall not be steeper

than lv:1.35h if it has been demonstrated to the department that embankment stability will result.

(e) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the department may specify.

(f) The road surface shall be sloped to prevent ponding of water on the surface.

(g) All material used in embankments shall be reasonably free of organic material, coal or coal blossom, frozen or excessively wet materials, peat material, natural soils containing organic matter, or any other material considered unsuitable by the department for use in embankment construction.

(h) Acid-producing materials shall be permitted for constructing embankments for only those roads constructed or reconstructed on coal processing waste banks and only if it has been demonstrated to the department that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of 405 KAR 16:190E, Sections 3 through 6; and 405 KAR 16:200E.

(i) All embankment slopes shall be revegetated as soon as possible to minimize erosion.

Section 4. Drainage. (1) General. Each road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system shall be designed to safely pass, at a minimum, the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event or a greater event if required by the department.

(2) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the department in accordance with 405 KAR 16:080E. The department may approve alterations and relocations only if the natural channel drainage is not blocked and there is no adverse impact on adjoining landowners.

(3) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not adversely affect fish migration and aquatic habitat or related environmental values, and shall not adversely affect the normal flow or gradient of the stream or cause increased flow depths which would adversely affect upstream properties outside the permit area.

(4) Ditches:

(a) Drainage ditches shall be placed at the toe of all cut slopes. A ditch shall be provided on both sides of a throughcut and on the inside shoulder of a cut-and-fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this section. Water from a fill or switchback shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill.

(b) Trash racks and debris basins shall be installed in drainage ditches wherever debris from the drainage area is likely to impair the functions of drainage and sediment control structures.

(5) Culverts and bridges:

(a) 1. Culverts shall pass the ten (10) year, twenty-four (24) hour precipitation event without causing overtopping of the road and without causing adverse effects upon upstream properties outside the permit area. Bridges and approach fills shall pass the 100 year, twenty-four (24) hour precipitation event or a larger event as specified by the department without causing increases in flow depths which would adversely affect upstream properties outside the permit area.

2. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

3. All culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

4. Culverts shall be designed, constructed, and maintained to sustain the structural load from the fill and the weight of vehicles to be used.

(b) Culverts for road surface drainage only shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under subparagraphs 2 or 3 of this paragraph, culverts shall be spaced as follows: spacing shall not exceed 1,000 feet on grades of zero (0) to three (3) percent; spacing shall not exceed 800 feet on grades of three (3) to six (6) percent; spacing shall not exceed 500 feet on grades of six (6) to ten (10) percent; spacing shall not exceed 300 feet on grades of ten (10) percent or greater.

2. Culverts at closer intervals than the maximum in subpargraph 1 of this pargraph shall be installed if required by the department as appropriate for the erosive properties of the soil or to accommodate flow from small intersection drainages.

3. Culverts may be constructed at greater intervals than the maximum indicated in subpargraph 1 of this paragraph if authorized by the department upon a finding that greater spacing will not increase erosion.

4. The inlet end shall be protected by a rock headwall or other protection approved by the department as adequate protection against erosion at the inlet. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

Section 5. Surfacing. (1) Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the department as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

Section 6. Maintenance. (1) Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the road.

(2) Road maintenance shall include repairs to the road surface such as grading, filling of potholes, and replacement of surfacing. It shall include revegetating of cut and fill slopes, watering for dust control, and minor reconstruction as necessary.

(3) Roads damaged by events such as floods or landslides, or by structural failures such as sliding or slumping of the embankment, shall be repaired as soon as practicable after the damage has occurred.

Section 7. Restoration. (1) As soon as practicable after a road is no longer needed for mining and reclamation operations or monitoring, unless the department approves retention of a road as suitable for the approved postmining land use:

(a) The road shall be closed to vehicular traffic;

(b) The natural-drainage patterns shall be restored;

(c) All bridges and culverts shall be removed;

(d) Roadbeds shall be ripped, plowed, and scarified;

(e) Fill slopes shall be rounded or reduced and shaped to

conform the site to adjacent terrain and to meet natural-drainage restoration standards;
(f) Cut slopes shall be shaped to blend with the natural contour;
(g) Cross drains, dikes, and water bars shall be constructed to minimize erosion;
(h) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and
(i) Road surfaces shall be topsoiled in accordance with 405 KAR 16:050E, Section 4(2) and revegetated in accordance with 405 KAR 16:200E, Sections 1 through 6.
(2) Unless otherwise authorized by the department, all road surfacing materials shall be removed and disposed of under 405 KAR 16:150E, Section 1.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:250E. Other facilities.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and 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 regulation sets forth general requirements for the design, construction, and maintenance of support facilities and transportation facilities other than roads, and the restoration of areas affected by such facilities.

Section 1. Other Transportation Facilities. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities within the permit area shall be designed, constructed or reconstructed, and maintained, and the area restored, to:
(1) Prevent, to the extent possible using the best technology currently available:
(a) Damage to fish, wildlife, and related environmental values; and
(b) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of state and federal law.
(2) Control and minimize diminution or degradation of water quality and quantity;
(3) Control and minimize erosion and siltation;
(4) Control and minimize air pollution; and
(5) Prevent damage to public or private property.

Section 2. Support Facilities and Utility Installation. (1) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at or near the minesite, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available:
(a) Damage to fish, wildlife, and related environmental values; and
(b) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.
(2) All surface mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads, electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the department.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:010E. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.410, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during

underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation contains general performance standards for maximizing coal recovery, prevention and correction of landslides, temporary cessation of operations, and permanent abandonment of operations.

Section 1. Applicability. The provisions of this chapter are applicable to all underground mining activities including coal processing plants, conducted under Title 405, Chapter 7. The provisions of this chapter also apply to those special categories of underground mining activities for which performance standards are set forth under 405 KAR 20:020E through 405 KAR 20:080E, except to the extent that a provision of those regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal operations is minimized.

Section 3. Slides. At any time a slide occurs which may have a potential adverse effect on the public, property, health, safety, or the environment, the permittee shall notify the department by the fastest available means and comply with any remedial measures required by the department.

Section 4. Permanent Abandonment of Operations. (1) Notice required. Not less than thirty (30) days prior to permanent abandonment of operations, the permittee shall provide written notice to the department that such abandonment is intended.

(2) Prior to abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the regulations of this Title, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the department approves the retention of such equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 5. Temporary Cessation of Operations. (1) Notice required. Not less than three (3) days prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the department that such temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with the water quality standards and the effluent limitations of 405 KAR 18:070E and the surface and groundwater monitoring requirements of 405 KAR 18:110E, and the obligation to prevent unreasonable adverse effects upon the environment during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:020E. Contemporaneous reclamation.

RELATES TO: KRS 350.093, 350.100, 350.151, 350.405, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth general requirements for keeping reclamation operations, including backfilling, grading, soil preparation and revegetation, as comtemporaneous as practicable with surface operations of underground mining.

Section 1. Contemporaneous Reclamation. Reclamation operations, including, but not limited to, backfilling, grading, soil preparation and revegetation, of all areas affected by surface operations of underground mining shall occur as contemporaneously as practicable with surface operations.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES
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Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:030E. Signs and markers.

RELATES TO: KRS 350.151, 350.200, 350.430, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.200, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth location and informational requirements for signs and markers at mine access points, perimeters of surface operations, stream buffer zones, surface blasting areas, and topsoil storage areas.

Section 1. Specifications. Signs and markers required under this chapter shall:
(1) Be posted, maintained, and removed by the permittee;
(2) Be of a uniform design throughout the activities that can be easily seen and read;
(3) Be made of durable material; and
(4) Conform to local laws and regulations.

Section 2. Duration of Maintenance. Signs and markers shall be maintained during all activities to which they pertain.

Section 3. Mine and Permit Identification Signs. (1) Identification signs shall be displayed at principal points of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.
(2) Signs will show the name, business address, and telephone number of the permittee and the person, if any, who conducts the surface coal mining and reclamation operation on behalf of the permittee and the identification number of the current department permit authorizing underground mining activities.
(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

Section 4. Perimeter Markers. The perimeter of all areas to be affected by surface operations or facilities shall be clearly marked before the beginning of mining activities.

Section 5. Buffer Zone Markers. Buffer zones required by 405 KAR 18:060E, Section 9 shall be clearly marked to prevent disturbance by surface operations and facilities.

Section 6. Blasting Signs. Permittees shall:
(1) Conspicuously flag or post the immediate vicinity of blasting activities.
(2) Place at all entrances to areas of surface operations and facilities in the permit area, from public roads or highways, conspicuous signs which state "Warning: Explosives in Use."

Section 7. Topsoil markers. Where topsoil or other vegetation supporting material is segregated and stockpiled as required under 405 KAR 18:050E, Section 3, the stockpiled material shall be clearly marked.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:040E. Casing and sealing of underground openings.

RELATES TO: KRS 350.151, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for temporary and permanent casing, sealing or other management of drill holes, boreholes, shafts, wells, or other exposed underground openings.

Section 1. General Requirements. Each exploration hole, other drill hole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved by the department, as necessary to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. Each exploration hole, drill hole or borehole or well that is uncovered or exposed by mining activities within the permit area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the department. Use of a drilled hole or monitoring well as a water well must meet the provisions of 405 KAR 18:060E, Section 6. This section does not apply to holes drilled and used for blasting, in the area affected by surface operations.

Section 2. Temporary. (1) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to

identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(2) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

Section 3. Permanent. When no longer needed for monitoring or other use approved by the department upon a finding of no adverse effects, or unless approved for transfer as a water well under 405 KAR 18:060E, Section 6, each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the department in accordance with Section 1 and 405 KAR 18:060E, Section 5 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:050E. Topsoil.

RELATES TO: KRS 350.151, 350.405, 350.415, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the removal, storage and redistribution of topsoil and requirements for substitution of other materials for topsoil.

Section 1. General Requirements. (1) Before further disturbance of areas affected by surface operations, topsoil and subsoils to be saved under Section 2 shall be separately removed and segregated from other material.

(2) After removal, topsoil shall be immediately redistributed in accordance with Section 4, stockpiled pending redistribution under Section 3, or if the permittee can demonstrate that an alternative procedure will provide equal or more protection for the topsoil, the department may, on a case by case basis, approve an alternative.

Section 2. Removal. (1) Topsoil shall be removed from areas to be affected by surface operations or major structures, after vegetative cover that would interfere with the use of the topsoil is cleared from portions of those areas that will be disturbed, but before any drilling for blasting, mining, or other surface disturbance of surface lands.

(2) Topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the department in accordance with subsection (5) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(3) If the topsoil is less than six (6) inches in depth, a six (6) inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon or the A horizon and all unconsolidated material if the total available is less than six (6) inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the department pursuant to subsection (5) of this section.

(4) The B horizon and portions of the C horizon, or other underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the department determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

(a) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the department determines that the resulting soil medium is equal to or more suitable for sustaining revegetation than is the available topsoil and the substitute material is the best available to support the vegetation. This determination shall be based on:

1. The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the department. The department may also require field-site trials, greenhouse tests, or other demonstrations by the applicant to establish the feasibility of using these overburden materials.

2. Results of analyses, trials, and tests shall be submitted to the department. Certification of trials and tests shall be made by a laboratory approved by the department, stating that: The proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil; the substitute material is the best available material to support the vegetation; and the trials and tests were conducted using approved standard testing procedures.

(b) Substituted or supplemental overburden material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this section.

(5) Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution:

(a) The size of the area from which topsoil is removed at any one (1) time shall be limited;

(b) The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and

(c) Such other measures shall be taken as the department may approve or require to control erosion.

Section 3. Storage. (1) Topsoil and other materials removed under Section 2 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished either by:

1. An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

2. Other methods demonstrated to and approved by the department to provide equal protection.

(b) Unless approved by the department, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

Section 4. Redistribution. (1) Before final placement of topsoil and other materials segregated in accordance with Section 3, land shall be scarified or otherwise treated as required by the department to eliminate slippage surfaces and to promote root penetration. If the permittee shows, through appropriate tests, and the department approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.'

(2) Topsoil and other materials shall be redistributed in a manner that:

(a) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, slopes, and surface drainage system;

(b) Prevents excess compaction of the topsoil; and

(c) Protects the topsoil from wind and water erosion before and after it is seeded and planted.

Section 5. Nutrients and soil amendments. Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of 405 KAR 18:200E. All soil tests shall be performed by a qualified laboratory using standard methods approved by the department.

Section 6. This regulation shall not be construed to require the stockpiling of topsoil for such extended periods of time as to render the topsoil of little value for supporting vegetation. Where areas from which topsoil has been removed will not be suitable for topsoil redistribution within the useful life of stockpiled topsoil, the topsoil removed from those areas shall be utilized to the extent practicable on other disturbed areas or other areas where the topsoil can be beneficially utilized within the permit area.

Section 7. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:060E. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.421, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, prevention and control of drainage from underground workings, control of erosion and sediment, protection of streams, and control of discharges into underground workings.

Section 1. General Requirements. (1) Underground mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, in order to prevent long term adverse changes in that balance that could result from those activities.

(2) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;
2. Diverting runoff;
3. Achieving quickly germinating and growing stands of temporary vegetation;

4. Regulating channel velocity of water;
5. Lining drainage channels with rock or vegetation;
6. Mulching;
7. Selectively placing and sealing acid-forming and toxic-forming materials;
8. Designing mines to prevent gravity drainage of acid waters;
9. Sealing;
10. Controlling subsidence; and
11. Preventing acid mine drainage.

(c) If the practices listed at paragraph (b) of this subsection are not adequate to meet the requirements of this chapter, the permittee shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this chapter.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) Meet the more stringent of applicable state or federal effluent limitations; and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 18:200E, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 405 KAR 18:190E, Section 1;

(c) Retaining sediment and storm runoff within disturbed areas where practicable;

(d) Diverting runoff away from disturbed areas;

(e) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;

(g) Treating with chemicals; and

(h) Treating mine drainage in underground sumps.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Drainage from acid-forming and toxic-forming underground development waste and spoil, if any, into ground and surface water shall be avoided by:

(1) Identifying, burying, and treating, where necessary, waste and spoil which the department determines, based on information in the permit application or other appropriate information, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with 405 KAR 18:190E, Section 3, and other measures as required by the department, and;

(3) Burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil within thirty (30) days after they are first exposed on the mine site, or within a lesser period required by the department. Temporary storage of such materials may be approved by the department upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming underground waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Underground Mine Entry and Access Discharges. (1) Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

(2) Gravity discharge of water from an underground mine, other than a drift mine subject to subsection (3) of this section may be approved by the department, if it is demonstrated that:

(a) 1. The discharge, without treatment, satisfies the water effluent limitations of 405 KAR 18:070E and all applicable state and federal water quality standards; and

2. That discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or

(b) 1. The discharge is conveyed to a treatment facility in the permit area in accordance with 405 KAR 18:070E, Section 1(1);

2. All water from the underground mine discharged from the treatment facility meets the effluent limitations of 405 KAR 18:070E and all other applicable state and federal statutes and regulations; and

3. Consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

(3) Notwithstanding anything to the contrary in subsections (1) and (2) of this section, for a drift mine first used after the effective date of this regulation and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

Section 6. Transfer of Wells. (1) An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the department. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the department for that approval.

(2) Upon an approved transfer of a well, the transferee shall:

(a) Assume primary liability for damages to persons or property from the well;

(b) Plug the well when necessary, but in no case later than abandonment of the well; and
(c) Assume primary responsibility for compliance with 405 KAR 18:040E with respect to the well.
(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection (2) of this section, until release of the bond or other equivalent guarantee required by Title 405, Chapter 10 for the area in which the well is located.

Section 7. Discharge of Water Into an Underground Mine. Water from the surface or from an underground mine shall not be diverted or discharged into other underground mine workings, unless the permittee demonstrates to the department that the discharge:
(1) Will abate water pollution or otherwise eliminate public hazards resulting from underground mining activities;
(2) Will be discharged as a controlled flow;
(3) Meets the effluent limitations of 405 KAR 18:070E for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the department and is limited to:
(a) Coal processing waste;
(b) Underground mine development waste;
(c) Fly ash from a coal-fired facility;
(d) Sludge from an acid mine drainage treatment facility;
(e) Flue gas desulfurization sludge; or
(f) Inert materials used for stabilizing underground mines.
(4) Will not cause or contribute to a violation of applicable water quality standards or effluent limitations due to the resulting discharge from the underground mines to surface waters (The most likely points of discharge to surface waters, if any, shall be located on a map as a part of the permit application.);
(5) Minimizes disturbances to the hydrologic balance; and
(6) Meets with the approval of the MSHA.

Section 8. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 9. Stream Buffer Zones. (1) No surface area within 100 feet of a perennial stream or a stream with a biological community determined according to subsection (3) of this section shall be disturbed by surface operations and facilities, unless the department specifically authorizes underground mining activities closer to or through such a stream under the following conditions:
(a) Any temporary or permanent diversions shall comply with 405 KAR 18:080E and shall be constructed prior to any disturbance of the buffer zone;
(b) That the original stream channel will be restored or relocated in a manner satisfactory to the department; and
(c) During and after the mining, the water quantity and quality from the stream section within 100 feet of the underground mining activities shall not be adversely affected.
(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 18:030E.
(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or mulluscan animals which are:
(a) Adapted to flowing water for all or part of their life cycle;
(b) Dependent upon a flowing water habitat;
(c) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and
(d) Longer than two (2) millimeters at some stage or part of their life cycle spent in the flowing water habitat.

Section 10. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:070E. Water quality standards and effluent limitations.

RELATES TO: KRS 350.020, 350.090, 350.100, 350.151, 350.405, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific water quality standards and effluent limitations which must be met, identifies the waters to which they apply and the periods of time in which they apply, requires water treatment for sediment control, and provides certain exemptions.

Section 1. Water Quality Standards and Effluent Limitations.
(1) (a) Any discharges to surface waters of water from disturbed areas, underground workings, coal processing plants, and other surface facilities, which do not meet the effluent limitations of this regulation, shall be treated by passing through sedimentation ponds or other approved treatment facilities before leaving the permit area and after such treatment shall meet the effluent limitations of this regulation.
(b) Sedimentation ponds and other treatment facilities for surface drainage from disturbed areas shall be properly maintained and shall not be removed until backfilling,

grading, topsoil redistribution, soil preparation, seeding, and mulching have been completed consistent with 405 KAR 18:020E, 405 KAR 18:050E, 405 KAR 18:190E, and 405 KAR 18:200E, and revegetation has initially met the standards for success of revegetation under 405 KAR 18:200E, on all disturbed areas in the drainage area above the sedimentation pond or other treatment facility.

(c) Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of this regulation without treatment or until the discharge has permanently ceased.

(d) For the purposes of this regulation only, disturbed area shall not include those areas affected by surface operations in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this chapter and the upstream area is not otherwise disturbed by the permittee.

(e) Sedimentation ponds required by this regulation shall be constructed in accordance with 405 KAR 18:090E, in appropriate locations before beginning any underground mining activities in the affected drainage area.

(f) Where sedimentation ponds are located so as to receive drainage both from disturbed areas and from other areas not disturbed by current surface coal mining and reclamation operations, the mixed drainage shall meet the effluent limitations in Appendix A of this regulation, as required under paragraph (g) of this subsection, when the mixed drainage leaves the permit area.

(g) Discharges of water from areas disturbed by underground mining activities shall at all times be in compliance with all federal and state laws and regulations and, at a minimum, discharges shall meet the applicable effluent limitations of this regulation until backfilling, grading, topsoil redistribution, soil preparation, seeding, and mulching of disturbed areas have been completed as required under 405 KAR 18:020E, 405 KAR 18:050E, 405 KAR 18:190E and 405 KAR 18:200E.

(h) During and for five (5) days after a precipitation event greater than the ten (10) year, twenty-four (24) hour precipitation event, the effluent limitations of Appendix A of this regulation shall not apply to discharges of water which occur as a direct result of such event.

(2) If a sedimentation pond or treatment facility has been designed, constructed and maintained to completely contain or treat the runoff which would result from a ten (10) year, twenty-four (24) hour precipitation event without any discharge of water from the sedimentation pond or treatment facility occurring as a direct result of such runoff, then the effluent limitations of Appendix A of this regulation shall not apply to any discharge of water from such sedimentation pond or treatment facility when the discharge occurs as a direct result of a precipitation event. The permittee shall have the burden of proof of demonstrating to the department that the conditions of this exemption are met.

(3) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from disturbed areas or discharged from underground mine workings, when necessary to ensure that the discharge complies with all federal and state laws and regulations and the requirements of this regulation. If the pH of water to be discharged from the disturbed area or mine is less than 6.0, a neutralization process approved by the department shall be installed, operated, and maintained.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

Appendix A of 405 KAR 18:070E

Effluent Limitations, in Milligrams per Liter (mg/l, except for pH)

Effluent characteristics[1]	Maximum allowable	Average of daily values for 30 consecutive discharge days[2]
Iron, total[5]	7.0	3.5
Manganese, total[3]	4.0	2.0
Total suspended solids	70.0	35.0
pH[4]	Within range of 6.0 to 9.0	

[1] To be determined according to collection and analytical procedures adopted by the Environmental Protection Agency's regulations for wastewater analyses (40 CFR 136).
[2] Based on representative sampling.
[3] The manganese limitations shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).
[4] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the department may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0 in order that the manganese limitations will be achieved.
[5] Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to 6.0 mg/l (maximum allowable) and 3.0 mg/l (average of daily values for thirty (30) consecutive discharge days.)

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:080E. Diversions.

RELATES TO: KRS 350.085, 350.100, 350.151, 350.405, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for design and construction of temporary and permanent diversions of overland flow, shallow groundwater flow, ephemeral streams, and intermittent and perennial streams.

Section 1. Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams. Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the department as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming and toxic-forming materials. The following requirements shall be met for all diversions and all collection drains that are used to transport waters into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams:

(1) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a two (2) year recurrence interval, or a larger event as specified by the department.

(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a ten (10) year recurrence interval, or a larger event as specified by the department. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the department to prevent seepage or to provide stability.

(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(4) No diversion shall be located so as to increase the potential for land slides and no diversion shall be constructed on existing slides unless approved by the department.

(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with 405 KAR 18:050E, Sections 4 and 5, 405 KAR 18:190E, and 405 KAR 18:200E.

(6) Diversion design shall incorporate the following:

(a) Channel linings shall be designed using standard engineering practices to safely pass the design velocities. Riprap shall comply with the requirements of 405 KAR 18:130E, Section 2(2)(d), except that sand and gravel shall not be used.

(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the department, the design freeboard may be increased.

(c) Energy dissipators shall be installed, when necessary, at discharge points where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 405 KAR 18:130E.

(e) Topsoil removed from the diversion excavations shall be handled in accordance with 405 KAR 18:050E.

(7) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the department under 405 KAR 18:060E, Section 7.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted if the diversions:

(a) Are approved by the department after making the findings called for in 405 KAR 18:060E, Section 9;

(b) Comply with other requirements of Title 405, Chapters 16 through 20; and

(c) Comply with applicable local, state, and federal statutes and regulations.

(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(a) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the department as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(b) The combination of channel, bank, and floodplain configurations shall be adequate to pass safely the peak runoff of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a 100-year, twenty-four (24) hour precipitation event for permanent diversions, or larger events, as specified by the department. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(3) When no longer needed to achieve the purpose for which they are authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 18:050E, Sections 4 and 5, 405 KAR 18:190E and 405 KAR 18:200E. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.

(4) When permanent diversions are constructed or stream channels restored after temporary diversions, the permittee shall:

(a) Restore, enhance where practicable, or maintain natural reparian vegetation on the banks of the stream;

(b) Establish or restore the stream to an environmentally acceptable meandering shape and gradient, as determined by the department; and

(c) Establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior

pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:090E. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.151, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds used for treatment of discharges from areas affected by surface operations and discharges from underground workings.

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:
(1) Be constructed and certified under Section 5(14) before any disturbance of the area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;
(2) Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the department;
(3) Meet all the criteria of this regulation;
(4) Be removed pursuant to Section 5(18) unless approved for retention under Section 5(19).

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a minimum sediment storage volume of 0.125 acre-feet for each acre of disturbed area within the upstream drainage area.

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond resulting from the water inflow or runoff entering the pond from a ten (10) year, twenty-four (24) hour precipitation event and lesser events shall meet the effluent limitations of Appendix A of 405 KAR 18:070E.

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the department. The dewatering device shall not be located at a lower elevation than the maximum elevation of the design sediment storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.
(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this regulation shall not relieve the permittee from compliance with applicable effluent limitations as contained in 405 KAR 18:070E.
(3) There shall be no outflow through the emergency spillway during the passage through the sedimentation pond of the runoff resulting from the ten (10) year, twenty-four (24) hour precipitation events and lesser events.
(4) Sediment shall be removed from sedimentation ponds when the designed sediment storage volume has filled with sediment, unless the department determines that retention of the accumulated sediment will not have a significant adverse effect upon the proper functioning of the sedimentation pond.
(5) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the department, plus any inflow from spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the department.
(6) The minimum elevation of the top of the settled embankment shall be 1.0 foot above the water surface in the reservoir with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.
(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the department that the material used and the design will ensure against all settlement.
(8) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H, in feet, is the height of the embankment as measured from the upstream toe of the embankment.
(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.
(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.
(12) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this regulation. Compaction shall be conducted as specified in the design approved by the department.
(13) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:
(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, twenty-four (24) hour

precipitation event, or a larger event specified by the department, plus any inflow from the underground mine.

(b) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the department to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the MSHA as published in 30 CFR 77.216 shall be met.

(14) Each pond shall be designed by a registered professional engineer; shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer; and after construction shall be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with 405 KAR 18:190E, Section 4.

(16) All ponds meeting the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion, and other hazardous conditions and reports and notifications shall be made to the department, in accordance with 30 CFR 77.216-3. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined as required by the department.

(17) Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 18:070E, Section 1(1)(b) have been met.

(18) Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the department under subsection (19) of this section. When a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 18:190E and 405 KAR 18:200E.

(19) If the department approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 18:060E, Section 8 and 405 KAR 18:100E.

(20) Notwithstanding other provisions of this regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B—moderate hazard or Class C—high hazard, shall comply with 405 KAR 7:040E, Section 6 and with 401 KAR 4:030.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:100E. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.455, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after completion of underground mining activities.

Section 1. General. (1) Permanent impoundments are prohibited unless authorized by the department, upon the basis of the following demonstration:

(a) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws.

(b) The level of water shall be sufficiently stable to support the intended use.

(c) Adequate safety and access to the impounded water shall be provided for proposed water users.

(d) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(e) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, PL 83-566 (16 USC 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in the U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs," June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds," October 1978.

(f) The size of the impoundment is adequate for its intended purposes.

(g) The impoundment will be suitable for its intended purposes and will be consistent with the approved postmining land use.

(2) Temporary impoundments of water in which the water is impounded in a dam shall meet the requirements of 405 KAR 18:090E, Section 5.

(3) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h. Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

(4) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

Section 2. Dams and Embankments. (1) All dams and embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of 405 KAR 18:200E immediately after the embankment is completed, provided that the active, upstream face of the dam or embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of 405 KAR 18:190E, Section 4 and 405 KAR 18:200E.

(2) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected by a qualified registered professional engineer, in accordance with 30 CFR 77.216-3

(3) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(4) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the department by a qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and/or maintained to comply with the requirements of this regulation. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by a registered professional engineer. Certification reports shall include statements on:

(a) Existing and required monitoring procedures and instrumentation;

(b) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(c) Existing storage capacity of the dam or embankment;

(d) Any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and

(e) Any other aspects of the dam or embankment affecting stability.

(5) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the department and shall comply with the requirements of this regulation. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the department shall approve the plans before modification begins.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:110E. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.420, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. Groundwater. (1) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department, to determine the effects of underground mining activities on the quantity and quality of water in ground water systems in the permit area and adjacent areas.

(2) When underground mining activities may affect ground water systems which serve as aquifers which significantly ensure the hydrologic balance or water use either on or off the permit area, ground water levels shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of the underground mining activities if necessary to minimize disturbance to the prevailing hydrologic balance.

(3) As specified and approved by the department, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests, and the results shall be submitted to the department to demonstrate compliance with this section.

Section 2. Surface Water. (1) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:040E, Section 32(2)(c) and approved by the department. The department shall

determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:

(a) Be adequate to measure accurately and record water quantity and quality of discharges from the permit area;

(b) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee notifying the department within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the permittee shall forward the analytic results concurrently with the written notice of noncompliance.

(c) Result in quarterly reports to the department, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the department. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the department on the same time schedule as required by the NPDES permit, or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.

(2) Surface water flow and quality shall continue to be monitored as long as the effluent limitations of 405 KAR 18:070E, Section 1(1)(g) are applicable, or such additional period as necessary to demonstrate achievement of the postmining land use capability.

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the surface disturbed area and from underground mine workings shall be properly installed, maintained, and operated and shall be removed when no longer required.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:120E. Use of explosives.

RELATES TO: KRS 350.151, 350.430
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the use of explosives for surface blasting, including qualified supervision of blasting, preblasting surveys, warning signals, restrictions on timing and location of blasting, limitations on airblast and ground vibration, seismographic measurements, and records of surface blasting operations.

Section 1. General Requirements. (1) This regulation applies only to surface blasting activities incident to underground mining, including, but not limited to, initial rounds of slopes and shafts.

(2) Each permittee and each person who conducts blasting operations shall comply with all applicable state and federal laws in the use of explosives.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved.

Section 2. Preblasting Survey. (1) On the request to the department by a resident or owner of a dwelling or structure that is located within one-half (½) mile of any surface blasting activity covered by this regulation, the permittee shall promptly conduct a preblast survey of the dwelling or structure. If a structure is renovated or added to, subsequent to a preblast survey, then upon request to the department, a survey of such additions and renovations shall be performed in accordance with this section.

(2) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. If the resident or owner or his representative accompanies the surveyor, the report shall contain the name of such person. Copies of the report shall be provided to the person requesting the survey and, upon request, to the department. If the person requesting the survey disagrees with the results of the survey within thirty (30) days of receipt of the survey, he or she shall notify, in writing, both the permittee and the department of the specific areas of disagreement.

Section 3. Surface Blasting Requirements. (1) A resident or owner of a dwelling or structure that is located within one-half (½) mile of any area affected by surface blasting activities shall be notified approximately twenty-four (24) hours prior to any surface blasting event.

(2) All blasting shall be conducted between sunrise and sunset.

(a) The department may specify more restrictive time periods, based on public requests or other relevant information according to the need to adequately protect the public from adverse noise.

(b) Blasting may, however, be conducted between sunset and sunrise if:

1. A blast that has been prepared during the day must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard would result that cannot be adequately mitigated;

2. In addition to the required warning signals, oral notices are provided to persons within one-half (½) mile of the blasting site; and

3. A complete written report of blasting at night is filed by the permittee with the department not later than three (3) days after the night blasting, not including Saturdays, Sundays, or holidays. The report shall include a description in detail of the reason for the delay in blasting including why the blasting could not be held over to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by Section 5.

(3) Warning and all-clear signals of different character that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (½) mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated to such persons in a manner which can reasonably be expected to inform such persons of the meaning of the signals. Delivery or other appropriate communication of the instructions to a head of household or to the person in charge of a place of business shall constitute sufficient communication of such instructions to all persons at such household or place of business. Each permittee shall maintain signs in accordance with 405 KAR 18:030E, Section 6.

(4) Access to an area subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting until an authorized representative of the permittee has reasonably determined:

(a) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(b) That access to and travel in or through the area can be safely resumed.

(5) (a) Airblast shall be controlled so that it does not exceed the values specified in Appendix A of this regulation at any dwelling, public building, school, church, or commercial or institutional building, unless such structure is owned or leased by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the permittee from meeting the airblast limitations of Appendix A of this regulation.

(b) In all cases except the C-weighted, slow response, the measuring systems used must have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard ANSI S1.4 1971 specifications.

(c) The permittee may satisfy the provisions of this section by meeting any one (1) of the four (4) specifications in Appendix A of this regulation.

(d) The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(6) Except where lesser distances are approved by the department, based upon a preblasting survey, seismic investigations, or other appropriate investigations, blasting shall not be conducted within:

(a) 300 feet of any building used as a dwelling, school, church, hospital, or nursing facility; or

(b) 300 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(7) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under subsection (4) of this section.

(8) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(9) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed two (2) inches per second at the location of any dwelling, public building, school, church, or commercial or institutional building. The maximum peak particle velocity shall be recorded as either the largest of the peak particle velocities measured in three (3) mutually perpendicular directions, or the vector sum thereof. The department may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(10) Provided that blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of subsection (9) of this section shall not apply at the following locations:

(a) At structures owned by the permittee or person conducting the blasting operation, and not leased to another party.

(b) At structures owned by the permittee or person conducting the blasting operation, and leased to another party, if a written waiver by the lessee is submitted to the department prior to blasting.

(11) An equation for determining the maximum weight of explosives that can be detonated within any eight (8) millisecond period is in Appendix B of this regulation. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the two (2) inches-per-second limit.

Section 4. Seismographic Measurements. (1) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of two (2) inches per second is not exceeded, the equation in Appendix B of this regulation need not be used. If that equation is not used by the permittee, a seismographic record shall be obtained for each shot.

(2) The use of a modified equation from that specified in Appendix B of this regulation, to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the department approve the use of a modified equation where the peak particle velocity of one (1) inch per second required in Section 3(9) would be exceeded.

(3) The department may require a seismograph record of

any or all blasts and may specify the location at which such measurements are taken.

Section 5. Records of Blasting Operations. A record of each blast, including any required seismograph reports, shall be retained for at least three (3) years and shall be available for inspection by the department and the public on request. The record shall contain the following data:

(1) Name of the person conducting the blasting operations.

(2) Location, date, and time of blast.

(3) Name, signature, and license number of blaster-in-charge.

(4) Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either:

(a) Not located in the permit area; or

(b) Not owned nor leased by the permittee.

(5) Weather conditions, including temperature, wind direction, and approximate velocity.

(6) Type of material blasted.

(7) Number of holes, burden, and spacing.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used.

(11) Maximum weight of explosives detonated within any eight (8) millisecond period.

(12) Maximum number of holes detonated within any eight (8) millisecond period.

(13) Initiation system.

(14) Type and length of stemming.

(15) Mats or other protections used.

(16) Type of delay detonator and delay periods used.

(17) Sketch of the delay pattern.

(18) Number of persons in the blasting crew.

(19) Seismographic records, where required, including the calibration signal of the gain setting and:

(a) Seismograph reading, including exact location of seismograph and its distance from the blast;

(b) Name of the person taking the seismograph reading; and

(c) Name of person and firm analyzing the seismograph record.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

Appendix A of 405 KAR 18:120E

Airblast Limitations

Lower frequency limit of measuring system, Hz (+ or - 3dB)	Maximum level in dB
0.1 Hz or lower—flat response	135 peak
2 Hz or lower—flat response	132 peak
6 Hz or lower—flat response	130 peak
C-weighted, slow response	109 C.

Appendix B of 405 KAR 18:120E

Maximum Weight of Explosives to be Detonated Within Any Eight (8) Millisecond Period

$$W = (D/50)^2$$

where W = the maximum weight of explosives, in pounds, that can be detonated in any eight (8) millisecond period

D = the distance, in feet, from the blast to the nearest dwelling, school, church or commercial or institutional building

For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance in Feet (D)	Maximum Weight in Pounds (W)
300	36
350	49
400	64
500	100
600	144
700	196
800	256
900	324
1,000	400
1,100	484
1,200	576
1,300	676
1,400	784
1,500	900
1,600	1,024
1,700	1,156
1,800	1,296
1,900	1,444
2,000	1,600
2,500	2,560
3,000	3,600
3,500	4,900
4,000	6,400
4,500	8,100
5,000	10,000

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:130E. Disposal of underground development waste and excess spoil.

RELATES TO: KRS 350.090, 350.151, 350.410, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during

underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the location of areas used for the disposal of underground development waste and excess spoil materials and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) Underground development waste and spoil not required for compliance with 405 KAR 18:190E shall be transported to and placed in designated disposal areas within a permit area in a manner approved by the department. The material shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of 405 KAR 18:070E;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(3) Vegetative and organic materials shall, either progressively or in a single operation, be removed from the disposal area and the topsoil shall be removed, segregated and stored or replaced in accordance with 405 KAR 18:050E. If approved by the department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 18:080E, Section 1. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the department. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The fill materials shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.5. For fills of less than 250,000 cubic yards volume located in remote areas where minor rotational failure would not endanger life or property, the department may approve a long term static safety factor of 1.3 for rotational failure. However, for such fills, the long term factor of safety against sliding of the fill mass shall be not less than 1.5.

(7) The final configuration of the fill must be suitable for proposed postmining land uses approved in accordance with 405 KAR 18:220E, except that no significant depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department and consistent with 405 KAR 18:090E, Section 2(2).

(9) Where the natural land slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with 405 KAR 8:040E, Section 28 to determine the size of the rock toe buttresses or keyway cuts.

(10) The fill shall be inspected for stability by a registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction, and during the following critical construction periods: removal of organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials, and revegetation. The responsible registered professional engineer shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the minesite.

(11) Coal processing waste shall not be disposed of in valley or head-of-hollow fills with excess spoil or underground development waste, and may only be disposed of with underground development waste or excess spoil in other fills if such waste is:

(a) Placed in accordance with 405 KAR 18:140E, Section 4;

(b) Demonstrated to be non-toxic and non-acid forming; and

(c) Demonstrated to have no adverse effect upon the stability of the fill.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Underground development waste and excess spoil may be returned to underground workings only in accordance with the disposal plans submited under 405 KAR 8:040E, Section 27 and approved by the department and MSHA.

Section 2. Valley fills and head-of-hollow fills. Valley fills and head-of-hollow fills shall meet all of the requirements of Section 1 and the additional requirements of this section, except as provided in Sections 3 and 4.

(1) The fill shall be designed to attain a long term static factor of safety of 1.5, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A sub-drainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;

2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates through detailed engineering analysis to the satisfaction of the department that a smaller drain will provide adequate long term capacity for drainage at the site.

(d) Underdrain shall consist of nondegradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale.

(3) Underground development waste and excess spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than four (4) feet.

(a) The department may require lifts of less than four (4) feet in order to:

1. Achieve the densities designed to ensure mass stability;
2. Prevent mass movement;
3. Avoid contamination of the rock underdrain or rock core; and
4. Prevent formation of voids.

(b) The department may approve lifts of greater than four (4) feet, or alternate methods of placement, if the permittee demonstrates through appropriate engineering analysis in the permit application that the provisions of subparagraphs 1 through 4 of paragraph (a) of this subsection will be met.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from the 100-year, twenty-four (24) hour precipitation event. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080E, Section 1(6).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

Section 3. Rock Core Chimney Drain. (1) A rock core chimney drain may be utilized as provided in this section instead of the subdrain and surface runoff diversion system required under Section 2(2) and (4), for:

(a) All head-of-hollow fills; and

(b) All valley fills placed near the elevation of the face-up area which do not exceed 250,000 cubic yards in volume.

(2) The rock core chimney drain shall be designed and constructed as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 2(2).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain runoff from the fill surface away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3) percent). Notwithstanding the requirement of Section 1(7), prohibiting depressions and impoundments, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept runoff from the fill surface and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. The drainage pocket and rock core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill. In no case shall this drainage pocket have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of safely passing the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the department.

Section 4. Hard Rock Spoil. (1) In lieu of the requirements of Sections 2 and 3, the department may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and Section 1 are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock waste or spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department.

(2) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of waste spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials will comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the department.

(3) Stability analyses shall be made by the registered professional engineer.

(a) Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including necessary borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety specified in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an

internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on appropriate records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) When necessary to ensure proper long-term functioning of the internal drainage system, the internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080E, Section 1(6).

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080E, Section 1(6).

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved post-mining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 5. Disposal on Existing Benches. The department may approve the disposal of excess spoil and underground development waste on benches created by surface coal mining operations conducted prior to May 3, 1978. Such spoil shall be disposed of in accordance with the backfilling and grading requirements of 405 KAR 16:190E, Section 2 for surface mining, in lieu of the requirements of this regulation.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

Appendix A of 405 KAR 18:130E

Minimum Drain Size

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd^3	Sandstone	10	4
Do.	Shale	16	8
More than 1,000,000 yd^3	Sandstone	16	8
Do.	Shale	16	16

Appendix B of 405 KAR 18:130E

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:140E. Disposal of coal processing waste.

RELATES TO: KRS 350.151, 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the disposal of coal processing waste, including design and construction requirements for coal processing waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal processing waste to underground mine workings.

Section 1. General Requirements. (1) All coal processing waste shall be transported and placed in a manner approved by the department in disposal areas approved by the department for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained:

(a) In accordance with this regulation and the criteria set forth in 405 KAR 18:130E, Sections 1 and 2; and

(b) To prevent combustion.

(2) Coal processing waste materials from activities located outside the permit area, such as those activities at

other mines or abandoned mine waste banks, may be disposed of in the permit area only if approved by the department. Approval shall be based on a showing by the permittee, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of these materials does not:

(a) Adversely affect water quality, water flow, or vegetation;

(b) Create public health hazards; or

(c) Cause instability in the disposal areas.

Section 2. Site Inspection. (1) All coal processing waste banks shall be inspected on behlf of the permittee by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer.

(a) Inspections shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The department may require more frequent inspections based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Section 4, topsoil has been distributed on the bank in accordance with 405 KAR 18:050E, Section 4, or at such a later time as the department may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 405 KAR 8:040E, Section 34, and approved by the department.

(c) The engineer shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(d) Copies of the inspection findings shall be maintained at the mine site.

(2) If any inspection discloses that a potential hazard exists, the department shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department shall be notified immediately. The department shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

Section 3. Water Control Measures. (1) Except where the department approves alternative practices which ensure structural integrity of the waste bank and protection of ground and surface water quality, a properly designed subdrainage system shall be provided, which shall:

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(2) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with 405 KAR 18:130E, Section 2(4).

(3) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(4) Discharges of all water from a coal processing waste bank shall comply with 405 KAR 18:060E, Sections 1, 2 and 7, 405 KAR 18:070E, 405 KAR 18:090E, and 405 KAR 18:110E.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 18:130E, Sections 1 and 2, except to the extent the requirements of those sections are specifically varied in this section.

(2) Coal processing waste banks shall have a minimum static factor of safety of 1.5.

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this subsection, instead of those specified in 405 KAR 18:130E, Section 2(3). The coal processing waste shall be:

(a) Spread in horizontal layers no more than twenty-four (24) inches in thickness; and

(b) Compacted to attain ninety (90) percent of the maximum dry density in order to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99-74 (Twelfth Edition) (July 1978) or an equivalent method.

(c) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus twenty-eight (28) sieve size) with approval of the department.

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with 405 KAR 18:050E, Section 2(5), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with 405 KAR 18:200E. The department may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of 405 KAR 18:200E will be met.

Section 5. Burning Coal Waste. Coal processing waste fires shall be extinguished by the permittee in accordance with a plan approved by the department and the MSHA. The plan shall contain, as a minimum, provisions to ensure that only those persons authorized by the permittee and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

Section 6. Burned Waste Utilization. Before any burned coal processing waste or other materials or refuse is removed from a disposal area, approval shall be obtained from the department. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and methods of compliance with this chapter, shall be submitted to the department. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the disposal area. The plan shall be certified by a qualified registered professional engineer.

Section 7. Return to Underground Workings. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the department and MSHA under 405 KAR 8:040E, Sections 27 and 28.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory

program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:150E. Disposal of waste other than coal processing waste, soil or rock.

RELATES TO: KRS 350.020, 350.090, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the storage and disposal of wastes other than coal processing waste, soil or rock.

Section 1. Storage and Disposal. (1) Storage. Wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, timber and other combustibles generated during underground mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Disposal. Final disposal of such wastes shall be in a designated disposal site in the permit area or other appropriate disposal areas approved by the department. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 405 KAR 18:200E. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(3) At no time shall any such waste material be deposited at coal processing waste banks, dams or impoundments, nor shall any such excavation for waste disposal be placed within eight (8) feet of any coal outcrop or coal storage area.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:160E. Coal processing waste dams and impoundments.

RELATES TO: KRS 350.151, 350.425
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific design and construction requirements for existing and new dams or embankments which are constructed of coal processing waste or will impound coal processing waste.

Section 1. General Requirements. (1) This regulation applies to dams and impoundments, constructed of coal processing waste or intended to impound coal processing waste, whether they were completed before the effective date of this regulation or are intended to be completed thereafter.

(2) Waste shall not be used in the construction of dams and impoundments unless it has been demonstrated to the department that the stability of such a structure conforms with the requirements of Section 3(1). It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or impoundment. All demonstrations shall be submitted to and approved by the department.

Section 2. Site Preparation. Before coal processing waste is placed at a dam or impoundment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustible materials shall be removed and disposed of or stockpiled in accordance with the requirements of this chapter; and

(2) Surface drainage that may cause erosion to the dam or the impoundment features, whether during construction or after completion, shall be diverted away from the dam or impoundment by diversion ditches that comply with the requirements of 405 KAR 18:080E, Section 1. Adequate outlets for discharge from these diversions shall be in ac-

cordance with 405 KAR 18:060E, Section 3. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak runoff from a 100-year, twenty-four (24) hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharges shall be in accordance with 405 KAR 18:060E, Section 3.

Section 3. Design and Construction. (1) The design of each dam and impoundment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of 405 KAR 18:100E, Sections 1(1)(e) and 2, modified as follows:

(a) The design freeboard between the lowest point on the dam or impoundment crest and the maximum water elevation shall be at least three (3) feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. Soil Conservation Service criteria referenced in 405 KAR 18:100E.

(b) The dam or impoundment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2.

(c) The dam or impoundment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or impoundment for all loading conditions appearing in paragraph (b) of this subsection or the publications referred to in 405 KAR 18:100E, and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or impoundments constructed of or impounding waste materials shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event shall be removed within a ten (10) day period.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:170E. Air resources protection.

RELATES TO: KRS 224.033, 350.020, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the control and monitoring of air pollution from surface operations of underground mining activities, with specific measures for the control of fugitive dust.

Section 1. Fugitive Dust Control. Each permittee shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations.

Section 2. Control Measures. The fugitive dust control measures to be used shall include, as necessary, but not be limited to:

(1) Periodic watering of unpaved roads;
(2) Chemical stabilization of unpaved roads with proper application of non-toxic soil cements or dust palliatives;
(3) Paving of roads;
(4) Prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;
(5) Revegetation, mulching, or otherwise stabilizing all areas adjoining roads that are sources of fugitive dust;
(6) Restricting the travel of vehicles on other than established roads;
(7) Minimizing the area of disturbed land;
(8) Prompt revegetation or other stabilization of disturbed lands;
(9) Planting of special windbreak vegetation at critical points in the permit area.

Section 3. Additional Measures. Where the department determines the application of fugitive dust control measures listed in Section 2 is inadequate, the department may require additional measures and practices as necessary.

Section 4. Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air quality monitoring plan if required under 405 KAR 8:040E, Section 35 and approved by the department.

Section 5. Each permittee shall comply with all applicable provisions of Title 401, Chapters 50 through 65.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:180E. Protection of fish, wildlife and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.405, 350.435, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values and the enhancement of such resources where practicable.

Section 1. Protection of Fish, Wildlife, and Related Environmental Values. (1) Any permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(2) A permittee shall promptly report to the department the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the department by that person.

(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the underground mining activities on the permit area shall be designed and constructed in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the department. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the department.

(4) Each permittee shall to the extent possible using the best technology currently available:

(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(b) Fence roadways where specified by the department to guide locally important wildlife to roadway underpasses or overpasses and construct the necessary passages. No new barrier shall be located in known and important wildlife migration routes;

(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(d) Restore, enhance where practicable, or avoid disturbances to habitats of unusually high value for fish and wildlife;

(e) Restore, enhance where practicable, or maintain natural reparian vegetation on the banks of streams, lakes, and other wetland areas;

(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 18:060E, Section 9 and 405 KAR 18:210E, Section 4 or restoring stream channels as required in 405 KAR 18:080E, Section 2.

(g) Not use persistent pesticides on the area during underground mining and reclamation activities unless approved by the department.

(h) To the extent possible prevent, control, and suppress range forest and coal fires which are not approved by the department as part of a management plan.

(i) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of 405 KAR 18:200E:

1. Select plant species to be used on reclaimed areas, based on the following criteria: their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds; and

2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(j) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use, and crop management practices, intersperse the fields with trees, hedges or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types of birds and other animals; and

(k) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts, utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:190E. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 360.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules

and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for backfilling and grading of areas affected by surface operations, including requirements for backfilling and grading of face-up areas and other cut slopes and limited exemptions, timing of backfilling and grading, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. General Requirements. Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with this regulation and a time schedule approved by the department as a condition of the permit.

Section 2. General Grading Requirements. (1) Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. Except when necessary for sealing openings under 405 KAR 18:040E, face-up areas and similar cut slopes need not be completely backfilled and graded if the department determines that:

(a) No significant adverse environmental impacts will result; and

(b) Sufficient backfill material is not available without redisturbance of settled fills that have become stabilized and successfully revegetated.

(2) In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and, when appropriate, provides a surface for replacement of topsoil which will minimize slippage.

Section 3. Covering Coal and Acid- and Toxic-forming Materials. (1) Cover:

(a) A permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and noncombustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, and other materials identified by the department as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land use.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the department shall specify thicker amounts of cover using non-toxic material.

(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to ensure the stability of backfilled materials. The method and design specifications of compacting material shall be approved by the department before acid-forming and toxic-forming materials are covered.

Section 4. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to 405 KAR 18:200E. The department may specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted, if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:200E. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.405, 350.410, 350.420, 350.435, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for revegetation of areas affected by surface operations of underground mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1) Each permittee shall establish on all areas disturbed by surface operations and facilities, a diverse, effective and permanent vegetative cover. For areas designated as prime farmland, the requirements of 405 KAR 20:040E shall apply.

(2) All revegetation shall be in compliance with the plan submitted under 405 KAR 8:040E, Sections 24(4) and 37 as approved by the department and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(a) All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, and other small incidental areas related to the

fulfillment of the postmining land use plan subject to approval by the department, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region.

(b) The vegetative cover shall be capable of self-regeneration and plant succession.

(c) Vegetative cover shall be at least equal in extent of cover to the natural vegetation of the area.

(d) If both the premining and the postmining land uses are cropland, successful establishment of the crops normally grown will meet the requirements of paragraph (a), (b) and (c) of this subsection.

Section 2. Use of Introduced Species. Introduced species may be used under the following conditions:

(1) The species are compatible with the plant and animal species of the region;

(2) The species meet the requirements of applicable state and federal seed or introduced species statutes, and are not poisonous or noxious; and

(3) (a) After appropriate field trials or other demonstrations or studies satisfactory to the department have shown that the introduced species, if proposed as the permanent vegetation, can establish an effective, and permanent cover compatible with the vegetation on surrounding areas and compatible with the approved postmining land use; or

(b) The species are necessary to achieve a quick, temporary and stabilizing cover that aids in controlling erosion, and measures to establish permanent vegetation are included in the approved revegetation plan.

(4) The department may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation, or to be more effective in achieving the approved postmining land use.

Section 3. Timing. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally or as established by the department for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded, as contemporaneously as practicable, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Mulching and Other Soil Stabilizing Practices. (1) Suitable mulch or other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, or to increase the moisture retention of the soil. The department may, on a case-by-case basis, suspend the requirement for mulch if the department finds that alternative procedures proposed by the permittee will achieve the requirements of Section 6 and do not cause or contribute to air or water pollution.

(2) When required by the department, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(3) Annual grasses and grains may be used alone, as in-situ mulch, or in conjunction with another mulch when the department determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(4) Chemical soil stabilizers alone or in combination with appropriate mulches may be used in conjunction with vegetative covers approved for the postmining land use.

Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the department approximately equal to that for similar non-mined lands, for at least the last two (2) full years of liability required under Section 6(2) or by other appropriate demonstration approved by the department.

Section 6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the department after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas, or through the use of technical guidance procedures published by USDA or USDI or other procedures approved by the department for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.

(2) (a) The ground cover and productivity of living plants on the revegetated area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the department. Groundcover and productivity shall equal the approved standard for the last two (2) consecutive years of the responsibility period.

(b) Except as provided in paragraph (c)3 of this subsection, the period of extended responsibility under the performance bond requirements of Title 405, Chapter 10 begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation, and continues for not less than five (5) years.

(c) The ground cover and productivity of the revegetated area shall be considered equal, if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands; or ground cover and productivity are at least ninety (90) percent of the technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the department under the following standards:

1. For previously mined areas that were not reclaimed to the requirements of Title 405, Chapters 16 through 20, the ground cover of living plants shall not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion;

2. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than the department determines to be necessary to control erosion; and

3. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to the approved reference areas or other approved technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two (2) consecutive growing seasons of the five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable five (5) year period of

responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the department that the initial planting of the crop has been completed. Promptly thereafter, the department shall inspect the area to verify that the initial planting has been completed.

4. On areas to be developed for fish and wildlife management or forestland, successful vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub or half-shrub stocking shall meet the standards described in Section 7. The area seeded to a ground cover shall be considered acceptable if it is at least seventy (70) percent of the ground cover of the reference areas with ninety (90) percent statistical confidence or if the ground cover is determined to be adequate to control erosion by the department. This subsection shall determine the responsibility period and the frequency of ground cover measurement.

(3) The permittee shall:

(a) Maintain any necessary fences and proper management practices; and

(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the department, to identify conditions during the applicable period of liability specified in subsection (2) of this section.

(4) For permit areas forty (40) acres or less in size, the following performance standards, if approved by the department, may be used to measure success of revegetation on sites that are disturbed.

(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability.

(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability and 400 woody plants per acre at the end of the five (5) years. On steep slopes, the minimum number of woody plants shall be 600 per acre.

(5) For the purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; wood plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

Section 7. Tree and Shrub Stocking. This section sets forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of available growing space, is established after underground mining activities.

(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well distributed countable trees, shrubs or half-shrubs.

(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

1. The tree or shrub shall be in place at least two (2) growing seasons;
2. The tree or shrub shall be alive and healthy; and
3. The tree or shrub shall have at least one-third (⅓) of its length in live crown.

(c) Rock areas, permanent road and surface water drainageways on the revegetated area shall not require stocking.

(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.

(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species.

(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c)4 and subsection (1) of this section and the sampling method approved by the department.

(d) Upon expiration of the five (5) year responsibility period and at the time of request for bond release each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy Section 6(2)(c)4 and this subsection.

(3) The following are the minimum performance standards for areas where woody plants are used for wildbelts, or forest uses other than commercial forest land:

(a) The stocking of trees, shrubs, half-shrubs, and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area or shall approximate the stocking and ground cover as approved in the mining and reclamation plan as appropriate for the approved postmining land use.

(b) Where a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the department. This inventory shall contain but not be limited to:

1. Site quality;
2. Stand size;
3. Stand condition;
4. Site species relations; and
5. Appropriate forest land utilization considerations.

(c) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that: the woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan with eighty (80) percent statistical confidence; and the ground cover on the revegetated area satisfies Section 6(2)(c)4. Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

Section 8. Planting Report. Prior to, or simultaneously with, the submittal of an application for the initial bond release on an area, the permittee shall file a certified planting report with the department, on a form prescribed and furnished by the department, giving the following information:

(1) Identification of the operation;

(2) The type of planting or seeding, including mixtures and amounts;

(3) The date of planting or seeding;

(4) The area of land planted; and
(5) Such other relevant information as the department may require.

Section 9. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:210E. Subsidence control.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for prevention or control of the effects of subsidence on surface areas which overlie underground workings, including planning and conduct of specific underground mining measures to control subsidence, underground mining buffer zones for protection of important aquifers, public buildings, communities, industrial and commercial facilities, perennial streams and major impoundments, requirements for notification of surface property owners and compensation for damages to surface properties, and restoration of surface lands affected by subsidence.

Section 1. General Requiremens. (1) Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. Nothing in Title 405, Chapter 7 through 24 shall be construed to prohibit the standard method of room and pillar mining.
(2) The permittee shall comply with all provisions of the subsidence control plan prepared pursuant to 405 KAR 8:040E, Section 26 and approved by the department.

Section 2. Public Notice. The mining schedule shall be distributed by mail to all owners of property and residents within the area above the underground workings and adjacent areas. Each such person shall be notified by mail at least three (3) months prior to mining beneath his or her property or residence. When such notice has been properly given, and subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath such property or residence sooner than three (3) months after such notice, the permittee shall immediately provide additional written notice to the owner or resident that such mining will be conducted, but in no case shall mining be conducted beneath the property or residence sooner than thirty (30) days after such additional notice is given. The notification shall contain, as a minimum:
(1) Identification of specific areas in which mining will take place;
(2) Approximate dates of mining activities that could cause subsidence and affect specific structures; and
(3) Measures to be taken to prevent or control adverse surface effects.

Section 3. Surface Owner Protection. (1) Each permittee shall adopt all measures approved by the department under 405 KAR 8:040E to reduce the likelihood of subsidence, to prevent subsidence causing material damage or reducing the value or reasonably foreseeable use of surface lands, and to mitigate the effects of any such damage or reduction which may occur.
(2) Each permittee who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, with respect to each surface area affected by subsidence:
(a) Restore, rehabilitate, or remove and replace each damaged structure, feature or value, promptly after the damage is suffered, to the condition it would be in if no subsidence had occurred and restore the land to a condition capable of supporting reasonably foreseeable uses it was capable of supporting before subsidence;
(b) Purchase the damaged structure or feature for its fair market, presubsidence value and shall promptly after subsidence occurs, to the extent technologically and economically feasible, restore the land surface to a condition capable and appropriate of supporting the purchased structure, and other foreseeable uses it was capable of supporting before mining. Nothing in this paragraph shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining activities; or
(c) Compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchase prior to mining of a noncancellable, premium prepaid insurance policy or other means approved by the department as assuring before mining begins that payment will occur; indemnify every person with a direct financial interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.

Section 4. Buffer Zones. (1) Underground mining activities shall not be conducted beneath or adjacent to any perennial stream, or impoundment having a storage volume of twenty (20) acre-feet or more, unless the department determines, on the basis of detailed subsurface information and consultation with the Kentucky Department of Mines and Minerals and MSHA as the department deems appropriate, that subsidence will not cause material

damage to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the damage and to prevent additional subsidence from occurring.

(2) Underground mining activities beneath any aquifer that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. The department may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.

(3) Underground mining activities shall not be conducted beneath or adjacent to any public buildings, including but not limited to churches, schools, hospitals, courthouses and government offices, unless the department determines, on the basis of detailed subsurface information and consultation with the Kentucky Department of Mines and Minerals and MSHA as the department deems appropriate, that subsidence for those activities will not cause material damage to these structures and specifically authorizes the mining activities.

(4) The department shall suspend underground coal mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments or permanent streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:220E. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for restoring surface land use capability after completion of underground 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 department under Section 4.

Section 2. 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 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. 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 4. Alternative Postmining Land Use. Alternative postmining land uses may be approved by the department 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 alternative 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 department within sixty (60) days of notice by the department.

(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 prior to the final release of bond liability for the permit area.

(2) Specific plans shall be prepared and submitted to the department which show the feasibility of the proposed postmining land use as related to projected land use trends and markets, and which include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining. The department 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 department which show that financing, attainment and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land use shall have been 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 or uses 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 shall have been obtained from the department, 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, have been reviewed by the department 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 Title 405, Chapter 10 and 405 KAR 18:200E, 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.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:230E. Roads.

RELATES TO: KRS 350.020, 350.028, 350.085, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the location, design, construction, maintenance, and removal or permanent retention of roads and associated drainage structures.

Section 1. General. (1) Each permittee shall design, construct or reconstruct, utilize, and maintain roads and restore the area to meet the requirements of this regulation and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) The design and construction or reconstruction of roads shall be certified by a qualified registered professional engineer as being in accordance with Sections 2 through 5, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the department upon a demonstration by a qualified registered professional engineer that they will result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from roads complying with the specifications of this regulation.

(4) All roads shall be removed and the affected land regraded and revegetated in accordance with the requirements of Section 7 unless:

(a) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) The necessary maintenance is assured; and

(c) All drainage is controlled according to Section 4.

Section 2. Location. (1) Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the department.

(3) Stream fords are prohibited unless they are specifically approved by the department as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures

designed, constructed, and maintained to meet the requirements of Section 4.

Section 3. Design and Construction. Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) The roadway width shall be appropriate for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used.

(2) Vertical alinement. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The maximum pitch grade shall not exceed lv:6.5h (fifteen (15) percent).

(b) There shall be not more than 300 feet of pitch grade exceeding ten (10) percent within any consecutive 1,000 feet of road.

(3) Horizontal alinement. Roads shall have horizontal alinement as consistent with the existing topography as possible, and shall provide the alinement required to meet the performance standards of this regulation. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(4) Temporary erosion control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(5) Excess or unsuitable material from excavations shall be disposed of in accordance with 405 KAR 18:060E, Section 4; 405 KAR 18:140E, Section 1; 405 KAR 18:190E, Section 3.

(6) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(7) Road cuts:

(a) Cut slopes shall not be steeper than specifically authorized by the department, and shall not be steeper than lv:1.5h in unconsolidated materials or lv:0.25h in rock, except that steeper slopes may be specifically authorized by the department if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(b) All cut slopes except solid rock cut slopes shall be revegetated as soon as possible to minimize erosion.

(8) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any road embankment.

(b) Where an embankment is to be placed on side slopes exceeding lv:5h (twenty (20) percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of ten (10) feet in width and shall extend a minimum of two (2) feet below the toe of the fill.

(c) Embankment shall be placed in horizontal layers and shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used, In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used.

(d) Embankment slopes shall not be steeper than lv:2h, except that where the embankment material is a minimum of eighty-five (85) percent rock, slopes shall not be steeper than lv:1.35h if it has been demonstrated to the department that embankment stability will result.

(e) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the department may specify.

(f) The road surface shall be sloped to prevent ponding of water on the surface.

(g) All material used in embankments shall be reasonably free of organic material, coal or coal blossom, frozen or excessively wet materials, peat material, natural soils containing organic matter, or any other material considered unsuitable by the department for use in embankment construction.

(h) Acid-producing materials shall be permitted for constructing embankments for only those roads constructed or reconstructed on coal processing waste banks and only if it has been demonstrated to the department that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of 405 KAR 18:190E, Sections 3 and 4; and 405 KAR 18:200E.

(i) All embankment slopes shall be revegetated as soon as possible to minimize erosion.

Section 4. Drainage. (1) General. Each road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system shall be designed to safely pass, at a minimum, the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event or a greater event if required by the department.

(2) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the department in accordance with 405 KAR 18:080E. The department may approve alterations and relocations only if the natural channel drainage is not blocked and there is no adverse impact on adjoining landowners.

(3) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not adversely affect fish migration and aquatic habitat or related environmental values, and shall not adversely affect the normal flow or gradient of the stream or cause increased flow depths which would adversely affect upstream properties outside the permit area.

(4) Ditches:

(a) Drainage ditches shall be placed at the toe of all cut slopes. A ditch shall be provided on both sides of a throughcut and on the inside shoulder of a cut-and-fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this section. Water from a fill or switchback shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill.

(b) Trash racks and debris basins shall be installed in drainage ditches wherever debris from the drainage area is likely to impair the functions of drainage and sediment control structures.

(5) Culverts and bridges:

(a) 1. Culverts shall pass the ten (10) year, twenty-four (24) hour precipitation event without causing overtopping of the road and without causing adverse effects upon upstream properties outside the permit area. Bridges and

approach fills shall pass the 100 year, twenty-four (24) hour precipitation event or a larger event as specified by the department without causing increases in flow depths which would adversely affect upstream properties outside the permit area.

2. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

3. All culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

4. Culverts shall be designed, constructed, and maintained to sustain the structural load from the fill and the weight of vehicles to be used.

(b) Culverts for road-surface drainage only shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under subparagraphs 2 or 3 of this paragraph, culverts shall be spaced as follows: spacing shall not exceed 1,000 feet on grades of zero (0) to three (3) percent; spacing shall not exceed 800 feet on grades of three (3) to six (6) percent; spacing shall not exceed 500 feet on grades of six (6) to ten (10) percent; spacing shall not exceed 300 feet on grades of ten (10) percent or greater.

2. Culverts at closer intervals than the maximum in subpargraph 1 of this pargraph shall be installed if required by the department as appropriate for the erosive properties of the soil or to accommodate flow from small intersection drainages.

3. Culverts may be constructed at greater intervals than the maximum indicated in subpargraph 1 of this paragraph if authorized by the department upon a finding that greater spacing will not increase erosion.

4. The inlet end shall be protected by a rock headwall or other protection approved by the department as adequate protection against erosion at the inlet. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

Section 5. Surfacing. (1) Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the department as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

Section 6. Maintenance. (1) Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the road.

(2) Road maintenance shall include repairs to the road surface such as grading, filling of potholes, and replacement of surfacing. It shall include revegetating of cut and fill slopes, watering for dust control, and minor reconstruction as necessary.

(3) Roads damaged by events such as floods or landslides, or by structural failures such as sliding or slumping of the embankment, shall be repaired as soon as practicable after the damage has occurred.

Section 7. Restoration. (1) As soon as practicable after a road is no longer needed for mining and reclamation operations or monitoring, unless the department approves retention of a road as suitable for the approved postmining land use:

(a) The road shall be closed to vehicular traffic;

(b) The natural-drainage patterns shall be restored;

(c) All bridges and culverts shall be removed;

(d) Roadbeds shall be ripped, plowed, and scarified;

(e) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(f) Cut slopes shall be shaped to blend with the natural contour;

(g) Cross drains, dikes, and water bars shall be constructed to minimize erosion;

(h) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(i) Road surfaces shall be topsoiled in accordance with 405 KAR 18:050E, Section 4(2) and revegetated in accordance with 405 KAR 18:200E, Sections 1 through 6.

(2) Unless otherwise authorized by the department, all road surfacing materials shall be removed and disposed of under 405 KAR 18:150E, Section 1.

Section 8. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:260E. Other facilities.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth general requirements for the design, construction, and maintenance of support facilities and transportation facilities other than roads, and the restoration of areas affected by such facilities.

Section 1. Other Transportation Facilities. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transport facilities within the permit area shall be designed, constructed or reconstructed, and maintained, and the area restored to:

(1) Prevent, to the extent possible using the best technology currently available:

(a) Damage to fish, wildlife and related environmental values; and

(b) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such

contribution shall not be in excess of limitations of state or federal law.

(2) Control and minimize diminution or degradation of water quality and quantity;

(3) Control and minimize erosion and siltation;

(4) Control and minimize air pollution; and

(5) Prevent damage to public or private property.

Section 2. Support Facilities and Utility Installations. (1) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal-loading facilities at or near the minesite, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available:

(a) Damage to fish, wildlife, and related environmental values; and

(b) Additional contributions of suspended solids to streamflow and runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(2) All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the department.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:010E. Coal exploration.

RELATES TO: KRS 350.057, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.057, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to regulate coal exploration operations which substantially disturb the natural land surface. This regulation sets forth the performance standards applicable to coal exploration operations which substantially disturb the land surface.

Section 1. General Responsibility of Persons Conducting Coal Exploration. (1) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 405 KAR 8:020E, Section 1 and shall comply with Section 3 of this regulation.

(2) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the department, shall comply with the procedures described in the exploration and reclamation operations plan approved under 405 KAR 8:020E, Section 2 and shall comply with Section 3 of this regulation.

Section 2. Required Documents. Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of the department for the activities granted under 405 KAR 8:020, Section 2. The written approval shall be available for review by the authorized representative of the department or the Office of Surface Mining Reclamation and Enforcement upon request.

Section 3. Performance Standards for Coal Exploration. The performance standards in this section are applicable to coal exploration which substantially disturbs land surface.

(1) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 405 KAR 8:030E, Section 36(2) shall not be disturbed during coal exploration.

(2) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under Title 405, Chapter 8.

(3) (a) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(b) Any new road in the exploration area shall comply with the provisions of 405 KAR 16:220E.

(c) Existing roads may be used for exploration in accordance with the following:

1. All applicable federal, state, and local requirements shall be met.

2. If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then subsection (7) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

3. If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of 405 KAR 16:220E are met for the design, construction, alteration, and maintenance of the road.

(d) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:

1. To a condition equal to or better than their preexploration condition; or

2. To the condition required for permanent roads under 405 KR 16:220E.

(4) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(5) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the department.

(6) Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the department and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved postexploration land use and in accordance with the following:

(a) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the preexploration and postexploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

(7) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:

(a) Prevents erosion;

(b) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area; and

(c) Complies with all other applicable state or federal requirements.

(8) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 405 KAR 16:040E.

(9) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that may remain to:

(a) Provide additional environmental quality data;

(b) Reduce or control the on- and off-site effects of the exploration activities; or

(c) Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.

(10) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 405 KAR 16:060E, Section 2 or sedimentation ponds which comply with 405 KAR 16:090E. The department may specify additional measures which shall be adopted by the person engaged in coal exploration.

(11) Toxic- or acid-forming materials shall be handled and disposed of in accordance with 405 KAR 16:060E, Section 4 and 405 KAR 16:190E, Section 3. If specified by the department, additional measures shall be adopted by the person engaged in coal exploration.

Section 4. Requirements for a permit. Any person who extracts coal for commercial sale during coal exploration operations must obtain a permit for those operations from the department under Title 405, Chapter 8. No permit is required if the department makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:020E. Concurrent surface and underground mining.

RELATES TO: KRS 350.093, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.093, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to regulate surface coal mining and reclamation operations, including provisions for contemporaneous reclamation. KRS Chapter 350 further requires the department to recognize the distinct differences between surface coal mining and underground mining. This regulation sets forth certain variance provisions from contemporaneous reclamation requirements when there are concurrent surface and underground mining operations.

Section 1. Responsibilities. The department shall review and grant or deny requests for variances from the requirement that reclamation efforts proceed as contemporaneously as practicable, in accordance with 405 KAR 8:050E, Section 7, and this regulation.

Section 2. Applicability. A variance under this regulation applies only to those specific areas within the permit area that the permittee conducting combined surface and underground mining activities has shown to be necessary for implementing the proposed concurrent operations and that the department has approved in the permit under 405 KAR 8:050E, Section 7. The variance is effective for any particular portion of the permit area only for the time necessary to facilitate the authorized underground mining activities.

Section 3. Compliance With Variance Terms. (1) Each permittee who conducts operations under a variance issued

under 405 KAR 8:050E, Section 7 shall comply with all applicable requirements of Title 405, Chapters 7 through 24, except to the extent that:

(a) A delay in compliance with these requirements is specifically authorized by the variance issued under the permit; and

(b) The delay in compliance is necessary to achieve the purposes for which the variance was granted.

(2) Each permittee who conducts activities under a variance issued under 405 KAR 8:050E, Section 7 shall comply with each requirement of the variance as set forth in the permit.

Section 4. Additional performance standards. In addition to the requirements of Title 405, Chapters 16 and 18, each permittee who conducts combined surface and underground mining activities shall comply with the following:

(1) A 500-foot barrier pillar of coal shall be maintained between the surface and underground mining activities in any one (1) seam. The department and the MSHA, and the Kentucky Department of Mines and Minerals may, however, approve a lesser distance, after a finding by the department that mining at a lesser distance will result in:

(a) Improved coal resources recovery;

(b) Abatement of water pollution; or

(c) Elimination of hazards to the health and safety of the public.

(2) The vertical distance between combined surface and underground mining activities working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

(3) No combined activities shall reduce the protection provided public health and safety below the level of protection required for those activities if conducted without a variance.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:030E. Auger mining.

RELATES TO: KRS 350.010, 350.028, 350.090, 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate environmental protection performance standards for surface coal mining operations, including auger mining. This regulation sets forth additional performance standards for auger mining associated with other surface mining activities. This regulation specifies certain distances between auger holes, criteria for plugging auger holes and criteria for when an auger hole need not be plugged.

Section 1. (1) Any auger mining associated with surface mining activities shall be conducted to maximize recoverability of mineral reserves remaining after the mining activities are completed. Each permittee who conducts auger mining operations shall leave areas of undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the department determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The department shall make such determination only upon presentation of appropriate technical evidence by the permittee. Except where the applicant designates specific areas where the applicant plans to develop future entryways for undergound mining, undisturbed areas of coal shall be left in unmined sections which:

(a) Are a minimum of 250 feet wide at any point between each group of auger openings to the full depth of the auger hole;

(b) Are no more than 2,500 feet apart, measured from the center of one (1) section to the center of the next section, unless a greater distance is set forth in the permit application under 405 KAR 8:050E, Section 2; and

(c) For multiple seam mining, shall have a width of at least 250 feet plus fifty (50) feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.

(2) No auger hole shall be made closer than 500 feet in horizontal distance to any abandoned or active underground mine workings, except as approved in accordance with 405 KAR 16:010E, Section 3.

(3) In order to prevent pollution of surface and ground water and to reduce fire hazards, each auger hole, except as provided in subsection (4) of this section, shall be plugged so as to prevent the discharge of water from the hole and access of air to the coal, as follows:

(a) Each auger hole discharging water containing toxic-forming or acid-forming material shall be plugged within seventy-two (72) hours after completion by backfilling and compacting noncombustible and impervious material into the hole to a depth sufficient to form a watertight seal or the discharge shall be treated commencing within seventy-two (72) hours after completion to meet applicable effluent limitations and water quality standards under 405 KAR 16:070E, until the hole is properly sealed; and

(b) Each auger hole not discharging water shall be sealed as in paragraph (a) of this subsection to close the opening within thirty (30) days following completion.

(4) An auger hole need not be plugged, if the department finds:

(a) Impoundment of the water which would result from plugging the hole may create a hazard to the environment or public health or safety; and

(b) Drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of 405 KAR 16:060E, Section 1 and 405 KAR 16:070E.

(5) The department shall prohibit auger mining, if it determines that:

(a) Adverse water quality impacts cannot be prevented or corrected;

(b) Fill stability cannot be achieved;
(c) The prohibition is necessary to maximize the utilization, recoverability or conservation of the solid fuel resources; or
(d) Subsidence resulting from auger mining may disturb or damage powerlines, pipelines, buildings, or other facilities.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:040E. Prime farmland.

RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.450, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate environmental protection performance standards specifically including special requirements for the protection of prime farmland. This regulation specifies special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

Section 1. Special Requirements. Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:
(1) A permit shall be obtained for those operations under 405 KAR 8:050E, Section 3.
(2) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Section 2 and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the department shall specify methods to control erosion of exposed overburden.
(3) Soil productivity shall be restored to support equivalent or higher levels of yield as nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. Successful restoration of soil productivity shall be demonstrated by either:
(a) A soil survey; or
(b) A comparison of actual average annual crop production on the restored area for the three (3) years prior to bond release, with the actual average annual production of similar crops in the same time period on nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. The comparison may include appropriate adjustments for weather induced variability in the average annual crop production.

Section 2. Soil Removal. (1) Surface coal mining and reclamation operations on prime farmland shall be conducted to:
(a) Separately remove the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining.
(b) Separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining.
(c) Separately remove the underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon. When replaced, these combinations shall be equal to, or more favorable for plant growth than, the B horizon.
(2) The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Section 4(1).

Section 3. Soil Stockpiling. If not utilized immediately, the A horizon or other suitable soil materials specified in Section 2(1)(a) and the B horizon or other suitable soil materials specified in Section 2(1)(b) and (c) shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than thirty (30) days shall meet the requirements of 405 KAR 16:050E, Section 3 or 405 KAR 18:050E, Section 3.

Section 4. Soil Replacement. Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:
(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The department shall specify a depth greater than forty-eight (48) inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.
(2) Replace soil material only on land which has been first returned to final grade and scarified according to 405 KAR 16:190E, Sections 1 through 5 or 405 KAR 18:190E, Sections 1 through 3, unless site-specific evidence is provided and approved by the department showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.
(3) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction.
(4) Replace the B horizon or other suitable material

specified in Section 2(1)(b) and (c) to the thickness needed to meet the requirements of subsection (1) of this section.

(5) Replace the A horizon or other suitable soil materials specified in Section 2(1)(a) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in 405 KAR 8:050E, Section 3(2)(a), and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to quickly establish vegetative growth.

Section 5. Revegetation. Each permittee who conducts surface coal mining and reclamation operations on prime farmland shall meet the following revegetation requirements during reclamation:

(1) Following soil replacement, the permittee shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the department under 405 KAR 8:050E, Section 3, and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 405 KAR 16:200E, Sections 3 and 4 or 405 KAR 18:200E, Sections 3 and 4 shall be met.

(2) Within a time period specified in the permit, but not to exceed ten (10) years after completion of backfilling and rough grading, any portion of the permit area which is prime farmland must be used for crops commonly grown, such as corn, soybeans, cotton, grain, hay, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. The crops may be grown in rotation with hay or pasture crops as defined for cropland. The department may approve a crop use of perennial plants for hay, where this is a common long term use of prime farmland soils in the surrounding area. The level of management shall equal or exceed the level of management on similar crops on similar prime farmland soils in the surrounding area.

Section 6. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:050E. Mountaintop removal.

RELATES TO: KRS 350.010, 350.028, 350.133, 350.405, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.133, 350.450, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate environmental protection performance standards for surface coal mining operations, including the mountaintop removal method. This regulation sets forth special performance standards and variance procedures for conducting mountaintop removal.

Section 1. Performance Standards. Surface coal mining activities may be conducted under a variance from the requirement of Title 405, Chapters 16 through 20 for restoring affected areas to their approximate original contour, if:

(1) The department grants the variance under a permit, in accordance with 405 KAR 8:050E.

(2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

(3) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

(4) The alternative land-use requirements of 405 KAR 16:210E are met;

(5) All applicable requirements of Title 405, Chapters 7 through 24, other than the requirement to restore affected areas to their approximate original contour, are met;

(6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the department may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

(a) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

(b) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

(7) The final graded slopes on the mined area are less than lv:5h, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed lv:2h except where engineering data substantiates, and the department finds, in writing, and includes in the permit under 405 KAR 8:050E, that a minimum static safety factor of 1.5 will be attained;

(8) The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill;

(9) Natural watercourses below the lowest coal seam mined are not damaged;

(10) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and

(11) Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under subsections (3) and (4) of this section. All excess spoil material not retained on the mountaintop shall be placed in accordance with 405 KAR 16:130E.

Section 2. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior

pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:060E. Steep slopes.

RELATES TO: KRS 350.090, 350.093, 350.100, 350.405, 350.445, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.100, 350.445, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate environmental protection performance standards, specifically including such standards for operations conducted on steep slopes. This regulation sets forth special performance standards and limited variance procedures for operations conducted on steep slopes.

Section 1. Applicability. (1) Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this regulation.

(2) The standards of this regulation do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 405 KAR 20:050E.

Section 2. Performance Standards. (1) Surface coal mining and reclamation operations subject to this regulation shall comply with requirements of Title 405, Chapter 8 and this section, except to the extent a variance is approved under Section 3.

(2) (a) The permittee shall prevent the following materials from being place or allowed to remain on the downslope:

1. Spoil;
2. Waste materials, including waste mineral matter;
3. Debris, including that from clearing and grubbing of haul road construction; and
4. Abandoned or disabled equipment.

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in Title 405, Chapters 16 and 18 and the material is moved and placed in a controlled manner.

(3) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of Title 405, Chapters 16 and 18, with respect to backfilling and grading, including, but not limited to, the return of the site to the approximate original contour. The permittee must demonstrate to the department, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

(4) Land above the highwall shall not be disturbed unless the department finds that the disturbance facilitates compliance with the requirements of Title 405, Chapters 16 through 20, provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(5) Material in excess of that required by the grading and backfilling provisions of subsection (3) of this section shall be disposed of in accordance with the requirements of 405 KAR 16:130E or 405 KAR 18:130E.

(6) Woody materials shall not be buried in the backfilled area unless the department determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in subsection 3 of this section. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the department.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the department as stable and not subject to erosion.

Section 3. Limited Variances. (1) Permittees may be granted variances from the approximate original contour requirements of Section 2(3) for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under 405 KAR 8:050E.

(2) The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

(3) The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw and reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

(4) The landowner of the permit area has requested, in writing, as part of the permit application under 405 KAR 8:050E, that the variance be granted.

(5) The operations are conducted in full compliance with a permit issued in accordance with 405 KAR 8:050E.

(6) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130E or 405 KAR 18:130E.

Section 4. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:070E. Offsite coal processing plants and support facilities.

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate environmental protection performance standards for all surface coal mining and reclamation operations. This regulation sets forth certain performance standards for offsite coal processing plants and support facilities.

Section 1. Applicability. Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with 405 KAR 8:050E to conduct those operations and comply with Section 2.

Section 2. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this regulation shall comply with the following:

(1) Signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with 405 KAR 18:030E.

(2) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with 405 KAR 18:230E and 405 KAR 18:260E.

(3) Any stream or channel realignment shall comply with 405 KAR 18:080E, Section 2.

(4) If required by the department, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with 405 KAR 18:060E, Section 2 and 405 KAR 18:090E, and all discharges from these areas shall meet the requirements of 405 KAR 18:060E, Section 1 and 405 KAR 18:070E and any other applicable state or federal law.

(5) Permanent impoundments associated with coal processing plants shall meet the requirements of 405 KAR 18:100E and 405 KAR 18:060E, Section 9. Dams constructed of or impounding coal processing waste shall comply with 405 KAR 18:160E.

(6) Use of water wells shall comply with 405 KAR 18:060E, Section 6.

(7) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with 405 KAR 18:140E, 405 KAR 18:150E and 405 KAR 18:130E.

(8) Discharge structures for diversions and sediment control structures shall comply with 405 KAR 18:060E, Section 3.

(9) Air pollution control measures associated with fugitive dust emissions shall comply with 405 KAR 18:170E.

(10) Fish, wildlife and related environmental values shall be protected in accordance with 405 KAR 18:180E.

(11) Slide areas and other surface areas shall comply with 405 KAR 18:010E, Section 3.

(12) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with 405 KAR 18:060E, Section 8.

(13) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with 405 KAR 18:060E, Section 9, 405 KAR 18:190E, 405 KAR 18:200E, 405 KAR 18:220E, and 405 KAR 18:010E, Sections 4 and 5.

(14) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with Title 405, Chapter 18.

(15) Any coal processing plant or associated structures located on prime farmland shall meet the requirements of 405 KAR 20:040E.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:080E. In situ processing.

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate environmental protection performance standards for all surface coal mining and reclamation operations. This regulation sets forth certain performance standards for in situ processing activities.

Section 1. Performance Standards. (1) The permittee who conducts in situ processing activities shall comply with Title 405, Chapter 18 and this section.

(2) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(a) Avoiding discharge of fluids into holes or wells, other than as approved by the department;

(b) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the department;

(c) Avoiding annular injection between the wall of the drill hole and the casing; and

(d) Preventing discharge of process fluid into surface waters.

(3) Each permittee who conducts in situ processing activities shall submit for approval as part of the application

for permit under 405 KAR 8:050E, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(4) Each permittee who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(a) Horizontally beyond the affected area identified in the permit; and

(b) Vertically into overlying or underlying aquifers.

(5) Each permittee who conducts in situ processing activities shall restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

Section 2. Monitoring. (1) Each permittee who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the department under 405 KAR 18:110E, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

(2) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the department as necesary according to appropriate federal and state air and water quality standards.

Section 3. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 24:020E. Petition requirements.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the department to prepare, develop, and promulgate a permanent program for the implementation of SMCRA containing procedures similar to tht Act. This 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 department to designate areas as unsuitable for all or certain types of surface coal mining operations. Additionally, there are procedures for citizens to petition the department 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 department to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated.

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

(2) The petition for designation shall include the information described in subsections (3) through (7) of this section.

(3) The petitioner's name, address, and telephone numbers.

(4) Identification of the petitioner's interest which is or may be adversely affected.

(5) USGS 7½ minute topographic map(s) marked to show the location and size of the geographic area covered by the designation petition.

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

(7) Allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations. Allegations of fact and supporting evidence shall address one (1) or more of the following:

(a) Reclamation is not technologically and economically feasible under the provisions of Title 405, Chapters 7 through 24;

(b) Surface coal mining and reclamation operations will be:

1. Incompatible with existing state, areawide, or local land use policies, plans, or programs;

2. 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;

3. 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;

4. 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;

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

6. Petitions shall be mailed or delivered to: Kentucky Department for Natural Resources and Environmental Protection, Lands Unsuitable Program, Bureau of Surface Mining Reclamation and Enforcement, 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 department containing all information that the department requires pursuant to this section. 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 information described in subsections (3) through (6) of this section.

(3) The petitioner's name, address, and telephone number;

(4) 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.

(5) USGS 7½ minute topographic map(s) marked to show the location and size of the geographic area covered by the termination petition.

(6) Allegation of facts with supporting evidence, not contained in the record of the proceeding in which the area was designated as unsuitable for all or certain types of surface mining operations, which would tend to establish the allegations that the designation should be terminated. Allegations of fact and supporting evidence shall address one (1) or more of the following:

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

(b) Surface coal mining operations:

1. Will not now be incompatible with state, areawide and local land use policies, plans, and program, if the designation was based on a finding of such incompatibility;

2. 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;

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

4. Will not now result in substantial loss or reduction of long-range productivity of food and fiber products, if the designation was so based;

5. 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.

(7) Termination petitions shall be mailed or delivered to: Kentucky Department for Natural Resources and Environmental Protection, Lands Unsuitable Program, Bureau of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601.

Section 5. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 24:030E. Process and criteria for designating lands unsuitable for surface mining operations.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980
NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the department to prepare, develop, and promulgate a permanent regulatory program for the implementation of SMCRA containing procedures similar to that Act. This regulation sets forth procedures and criteria for reviewing petitions seeking designation of lands as unsuitable for all or certain types of coal mining operations and for the termination of designations.

Section 1. General. The following procedures and criteria establish a process enabling objective decisions to be made on which land areas, if any, are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on the best available, scientifically sound data and other relevant information.

Section 2. Lands Exempt From Designation. (1) Petitions for designating lands as unsuitable for all or certain surface coal mining operations will not be considered for:

(a) Lands on which surface coal mining operations were being conducted on August 3, 1977;

(b) Lands covered by a permit issued under KRS Chapter 350 or a permit application for which the public comment period has closed according to Section 3(6);

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

(2) Determination of "substantial legal and financial commitments" will be based on a finding that significant investments have been made on the basis of a long-term coal contract. The costs of acquiring the coal in place or the right to mine such coal, will not alone constitute a substantial legal and financial commitment in the absence of an existing mine. Factors to be considered will include, but not be limited to, the following:

(a) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantial monies on the improvement or modification of coal lands within, for access to, or in support to surface coal mining operations in the petitioned area.

(b) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantial monies on capital equipment within, for access to, or in support of surface coal mining operations in the petitioned area.

Section 3. Initial Processing of Petitions. (1) Within thirty (30) days of the receipt of a petition to designate or terminate, the department shall notify the petitioner by certified mail whether or not the petition is complete.

(2) If the department determines that the petition is incomplete, it shall be returned to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(3) The department shall determine whether any identified coal resources exist in the area described in the peti-

tion. Should the department find that there are not identified coal resources in that area, the petition shall be returned to the petitioner with a statement of findings.

(4) The department may reject petitions for designations or terminations which are found to be frivolous. If the department finds that the petition is frivolous, it shall return the petition to the petitioner with a written statement of the reasons for the determinations.

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the department shall determine if the new petition presents substantial new allegations of facts and supporting evidence. If the petition does not contain new and substantial allegations of facts, the department shall return the petition with a statement of its findings and a reference to the record of the previous designation proceedings.

(6) Petitions received after the close of the public comment period on a permit application relating to the same area shall not prevent the department from issuing a decision on that permit application. The department may return such a petition to the petitioner with a statement of why the department will not consider the petition. For the purpose of this regulation, the close of the public comment period shall mean at the close of any informal conference held under 405 KAR 8:010E, Section 11, or, if no conference is requested, at the close of the period for filing written comments and objections under 405 KR 8:010E, Sections 9 and 10.

Section 4. Notification and Request for Information. (1) The department shall notify the petitioner of applications for a permit received which proposes to include any area covered by the petition. The department shall begin this notification procedure only after it has determined that the petition is complete and has so notified the petitioner.

(2) Within twenty-one (21) days after the determination that a petition is complete, the department shall circulate copies of the petition form to, and request submission of relevant information from:

(a) Other interested government agencies;

(b) Areawide development district agencies;

(c) The petitioner;

(d) Persons with an ownership interest of record in the property;

(e) Intervenors; and

(f) Other persons known to the department to have an interest in the property.

(3) Within twenty-one (21) days after the determination that a petition is complete, the department shall notify the general public of the receipt of the petition and request submissions of relevant informaton by a newspaper advertisement. The advertisement shall be placed once a week for two (2) consecutive weeks:

(a) In the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county of the area covered by the petition; and

(b) In the newspaper of largest circulation in the state.

(4) Until three (3) days before the department holds a public hearing on the petition pursuant to Section 7, any person may intervene in the preceeding, by filing:

(a) The intervenor's name, address, and telephone number;

(b) Identification of the intervenor's interest which is or may be adversely affected;

(c) A short statement identifying the petition;

(d) Allegations of fact and supporting evidence which would tend to establish or dispute the allegations found in the petition.

Section 5. Data Base and Inventory System. (1) The department will develop and maintain a data base and inventory system which will permit evaluation of reclamation feasibility in areas covered by petition.

(2) The department will include in the data base and inventory system, information relevant to the criteria in Section 8.

(3) The department will include in the data base and inventory system sufficient information to prepare the statements required in Section 8(3), including information on:

(a) The coal resources of Kentucky;

(b) The demand for Kentucky coal;

(c) The supply of Kentucky coal;

(d) The economy of Kentucky and its coal mining regions; and

(e) The environment and natural resources of Kentucky.

(4) The department will include in the data base and inventory system relevant information that comes available from petitions, publications, studies, experiments, permit applications, surface coal mining operations, and other sources. The department will also include relevant information received from the U.S. Fish and Wildlife Service, the Kentucky Heritage Commission, and the department's Division of Air Pollution Control.

Section 6. Public Information. (1) Beginning immediately after the department determines that a petition is complete, it shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the department.

(2) The department shall make the record, data base and information system available for public inspection, pursuant to KRS 61.870 et seq.

(3) The department shall provide information on the petition procedures necessary to designate (or terminate a designation of) an area as unsuitable for surface coal mining operations.

(4) The department shall describe how the inventory and data base can be used.

Section 7. Hearing Requirements. (1) Within ten (10) months after receipt of a complete petition, the department shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree,the hearing need not be held. The hearing shall be legislative in nature, without cross-examination of witnesses. The department shall make a verbatim transcript of the hearing.

(2) The department shall give notice of the date, time, and location of the hearing to:

(a) Local, areawide, state, and federal agencies which may have an interest in the decision on the petition;

(b) The petitioner and the intervenors; and

(c) Any person with an ownership or other interest known to the department in the area covered by the petition.

(3) Notice of the hearing shall be sent by certified mail and be postmarked not less than thirty (30) days before the scheduled date of the hearing.

(4) The department shall notify the general public of the date, time, and location of the hearing by placing an advertisement in the newspaper of largest circulation according to the definition in KRS 424.110 to 424.120, in the county of the area covered by the petition once a week for two (2) consecutive weeks and during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must be published four (4) and five (5) weeks before the scheduled date of the public hearing.

(5) The department may consolidate in a single hearing, the hearings required for each of several petitions which relate to areas in the same locale.

(6) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

Section 8. Criteria and Decision. (1) The department shall designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it determines that reclamation is not technologically and economically feasible under the performance standards of Title 405, Chapters 7 through 24 at the time of designation.

(2) The department may designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it is determined that the surface coal mining operations will:

(a) Be incompatible with existing state, areawide, or local land use policies, plans, and programs;

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

(c) Affect renewable resource lands in which the surface coal mining operations would result in substantial loss or reduction of the long-range availability of water supplies;

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

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

(3) Prior to designating any land areas as unsuitable for surface coal mining operations, the department shall prepare a detailed statement, using existing and available information, on the potential coal resources of the area, the effect of the action on demand for, and supply of, Kentucky coal, and the environmental and economic impacts of designation.

(4) In reaching a decision, the secretary shall use:

(a) The relevant information contained in the data base and inventory system;

(b) Relevant information provided by other governmental agencies; and

(c) Any other relevant information or analysis submitted during the comment period and public hearing.

(5) A final written decision shall be issued by the secretary including a statement of reasons, within sixty (60) days of completion of the public hearing, or, if no public hearing is held, then within twelve (12) months after receipt of the complete petition. The department shall simultaneously send the decision by certified mail to the petitioner, all intervenors, and to the Regional Director of the Office of Surface Mining, U.S. Department of the Interior.

Section 9. Map. The department shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations. Such maps will periodically be distributed to appropriate federal, state, areawide, and local government agencies.

Section 10. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 24:040E. Permit application review.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
EFFECTIVE: June 11, 1980
EXPIRES: October 9, 1980

NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the department to prepare, develop, and promulgate a permanent regulatory program for the implementation of SMCRA containing procedures similar to that Act. This regulation sets forth procedures for reviewing applications for surface coal mining and reclamation operation permits to determine whether surface coal mining and reclamation operations are limited or prohibited.

Section 1. General. The department shall prohibit or limit surface coal mining and reclamation operations on or near certain private, federal, and other public lands designated by Congress in the Surface Mining Control and Reclamation Act of 1977 (PL 95-87), except for operations which existed on August 3, 1977, or were subject to valid existing rights on that date. The department shall also prohibit certain surface coal mining operations on lands designated unsuitable for all or certain types of surface coal mining and reclamation operations under 405 KAR 24:030E.

Section 2. Permit Application Review. Unless the required approvals or waivers are obtained, upon receipt of a complete application for a surface coal mining and reclamation operation permit, and subject to valid existing rights, the department shall review the application and deny the permit if it determines that the lands which would be disturbed by the proposed operation include:

(1) Lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), and the National Recreation Areas designated by Act of Congress;

(2) Lands within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building; or

(3) Lands within 100 feet, measured horizontally, of a cemetery.

(4) Lands which will adversely affect any publicly owned park or publicly owned places included on the National Register of Historic Places unless jointly approved by all affected agencies as set forth in paragraphs (a) through (c) of this subsection.

(a) The department shall transmit to the federal, state, or local government agencies with management responsibility for the public park or historic place, a copy of the completed permit application.

(b) The department shall request the appropriate agency to respond within thirty (30) days from the receipt of the request and to indicate its approval or disapproval.

(c) A permit for a surface coal mining and reclamation operation shall not be issued unless jointly approved by all affected agencies.

(5) Lands within 300 feet, measured horizontally, from any occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to surface coal mining operations closer than 300 feet.

(a) The applicant shall submit with the permit application a written waiver from the owner of the dwelling, consenting to such an operation within a closer distance of the dwelling specified in the waiver. Valid waivers obtained prior to August 3, 1977 are valid for the purposes of this paragraph. Waivers obtained from previous owners shall remain effective for subsequent owners who had knowledge of the existing waiver at the time of purchase.

(b) The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver. In such case, a copy of the lease or deed must be included with the permit application.

(6) Lands within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way). The department may allow areas within 100 feet to be affected or may allow the public road to be relocated, provided that, the department shall:

(a) Require the applicant to obtain any necessary approval of the governmental authority with jurisdiction over the public road;

(b) Publish notice in a newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county of the affected area;

(c) Provide opportunity for a public hearing in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(d) Make a written finding within thirty (30) days after any such hearing on the basis of information received at the public hearing as to whether the interests of the public and affected landowners will be protected.

(7) Federal lands within the boundaries of any national forest, unless specifically approved by the Secretary of the Interior.

Section 3. Assistance Review. If the department is unable to determine whether the proposed surface coal mining operation is located within the boundaries of any of the lands identified in Section 2, the department shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the agency that it must respond in writing within thirty (30) days of receipt of the request. Upon failure of the agency to respond in writing within the thirty (30) day period, the department shall presume that the proposed surface coal mining operation is not located within the boundaries of any such lands.

Section 4. Valid Existing Rights. (1) Except for haul roads, "Valid existing rights" means property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on such lands either:

(a) Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for such permits being deemed to constitute good faith efforts to obtain such permits; or

(b) Can demonstrate to the department that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(2) For haul roads, "valid existing rights" means:

(a) A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

(b) Any other road in existence as of August 3, 1977.

(3) "Valid existing rights" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(4) Interpretation of the terms of the documents relied upon to establish existing rights shall be based upon the laws of Kentucky.

(5) A determination that "coal is needed for" will be based upon, but not be limited to, a finding that additional production originating on adjacent land is necessary to preclude a financial hardship on the mining operation measured by standard accounting and financial procedures, provided that:

(a) A less than fair rate-of-return on invested capital is not achievable on existing permitted land;

(b) A less than fair rate-of-return on invested capital is attributable to the provisions of this chapter; and

(c) The operator can establish that the adjacent unpermitted land is part of the operator's mining plan.

Section 5. Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to this chapter does not prohibit coal exploration operations in the area, if conducted in accordance with KRS Chapter 350 and Title 405, Chapters 7 through 20. Exploration operations on any lands designated unsuitable for surface coal mining operations shall be approved only when the department finds that the proposed exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining operations.

Section 6. Lands Designated Unsuitable. The department shall not issue permits which are inconsistent with designations made pursuant to 405 KAR 24:030E and this regulation.

Section 7. This regulation shall become effective on the date of publication in the Federal Register of the notice of approval of the Commonwealth's permanent regulatory program by the United States Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

ELMORE C. GRIM, Commissioner
ADOPTED: June 9, 1980
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: June 11, 1980 at 3 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 80-443
June 11, 1980

EMERGENCY REGULATION
Department of Housing, Buildings and Construction
Fees for Plumbing Installations

WHEREAS, the Department of Housing, Buildings and Construction is required by KRS 318.134(3) to fix a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections which are to be contained in regulations issued by the Board of Housing, Buildings and Construction; and

WHEREAS, the Board of Housing, Buildings and Construction has approved a proposed fee increase of the Department on May 22, 1980, to enable the Division of Plumbing to operate as a "fee supported division;" and

WHEREAS, publication and filing of this regulation under KRS 13.085(1) cannot be completed so as to have the new fees in place during the most active building months of June, July, August and September, and would, therefore, seriously jeopardize the fiscal soundness of the Division; and

WHEREAS, the Secretary of the Public Protection and Regulation Cabinet, in consultation with the Board of Housing, Buildings and Construction has determined that an emergency exists and requests the Governor to declare the attached regulation effective immediately:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding by the Secretary of the Public Protection and Regulation Cabinet that an emergency exists and direct that the attached regulation relating to plumbing installation permits and inspections become effective upon being filed in the office of the Legislative Research Commission.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 20:050E. Installation permits.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.134, 318.010
EFFECTIVE: June 13, 1980
EXPIRES: October 11, 1980

NECESSITY AND FUNCTION: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state.

Section 1. Issuance of permits. (1) Except as otherwise provided by subsection (3) of this section, permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage except when the work is done under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them provided:

(a) Application is made for the permit prior to the beginning of the work;

(b) All work is performed in compliance with the state plumbing law and code and the rules and regulations thereunder promulgated;

(c) The work is not performed for monetary gain;

(d) All the work is personally performed by the owner and he does not employ any other person to assist him.

(4) No permit shall be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes.

Section 2. When a permit is required. A plumbing construction permit shall be required for the following: (1) For all new plumbing installations.

(2) For all existing plumbing installations where a fixture or a soil waste opening is to be moved or relocated.

(3) For each individual unit of a multi-story building where there is more than one (1) unit.

(4) For each individual building. (Buildings shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For any other installation which constitutes "plumbing" within the meaning of KRS Chapter 318 and the state plumbing code.

Section 3. Plumbing installation permit fees. (1) The fee for each plumbing installation permit shall be *fifteen dollars ($15)* [twelve dollars ($12)] plus:

(a) *Four dollars ($4)* [Three dollars ($3)] for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) *Four dollars ($4)* [Three dollars ($3)] for each domestic water heater.

(2) In the event only a new domestic water heater is installed or replaced, the fee for the plumbing installation permit shall be ten dollars ($10).

(3) In the event only a new water service is constructed or replaced the fee for the plumbing construction permit shall be ten dollars ($10).

(4) In the event only a new house sewer is constructed or replaced the fee for a plumbing construction permit shall be ten dollars ($10).

(5) In the event only a new private sewage disposal system is constructed or replaced the fee for a plumbing construction permit shall be ten dollars ($10).

(6) All persons securing plumbing permits shall be entitled to plumbing inspections at no additional cost; provided, however, that all inspections in excess of three (3) shall be charged at the rate of three dollars ($3) per inspection.

(7) All plumbing installation permits issued under this regulation shall expire one (1) year after date of issuance thereof; provided, however, if construction is begun within one (1) year after date of issuance the permit shall not expire until completion of the planned plumbing installation.

(8) Plumbing fixtures may be replaced without procuring a plumbing installation permit provided the county plumbing inspector is notified of the installation.

Section 4. Plumbing inspection fees for public buildings. The schedule of fees for inspection of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3.

JOHN R. GROVES, JR., Commissioner
H. FOSTER PETTIT, Secretary
ADOPTED: May 22, 1980
RECEIVED BY LRC: June 13, 1980 at 4:30 p.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June 4, 1980 Meeting

(Subject to subcommittee approval at its next meeting on July 2, 1980.)

The Administrative Regulation Review Subcommittee held its regularly scheduled meeting on Wednesday, June 4, 1980, at 10 a.m., in Room 327 of the Capitol. The minutes of the May 7, 1980 meeting were approved. Present were:

Members: Representative William T. Brinkley, Chairman; Senator William Quinlan, and Representative Albert Robinson.

Guests: Billie R. Downing, Ed Fossett, Don Hart, Charles E. Calloway and Peggy Stephens, Department of Education; Don R. McCormick and William D. Graves, Department of Fish and Wildlife Resources; Ked R. Fitzpatrick, Department for Human Resources; Roger Blair, Caroline Patrick Haight and Karen Armstrong-Cummins, Department for Natural Resouces and Environmental Protection; Douglas R. Wheeler, Department of Agriculture; Ruby Sexton, Department of Public Information; Paula Moore-Carson, Department of Finance; Andy Naff, Kentucky Drug Formulary; John M. Leinenbach, Associated General Contractors; Herman D. Regan, Kenvirons; Tony Sholar, Kentucky Chamber of Commerce.

LRC Staff: Mabel D. Robertson, Deborah Herd, Garnett Evins, Joe Hood, and Barbara Rhodes.

On motion of Senator Quinlan, seconded by Chairman Brinkley the following regulation was deferred until the July meeting:

DEPARTMENT OF FINANCE
Occupations and Professions
Board of Hairdressers and Cosmetologists
201 KAR 12:105. School districts.

On motion of Senator Quinlan, seconded by Chairman Brinkley the following regulations were approved and ordered filed:

DEPARTMENT OF PERSONNEL
Personnel Rules
101 KAR 1:130. Appeals.

DEPARTMENT OF FISH AND WILDLIFE RESOURCES
Game
301 KAR 2:047. Specified areas; seasons, limits for birds and small game.
301 KAR 2:111. Deer and turkey hunting on special areas.

DEPARTMENT OF AGRICULTURE
Pesticides
302 KAR 31:015. Certification.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
401 KAR 2:050. Hazardous waste definitions.
401 KAR 2:055. Provisions, generally.
401 KAR 2:060. Hazardous waste permits.
401 KAR 2:065. Inspections, hearings and penalties.

On motion of Senator Quinlan, seconded by Representative Robinson the following regulations were approved and ordered filed:

DEPARTMENT FOR NATURAL RESOURCES AND ENVIROMENTAL PROTECTION
Bureau of Environmental Protection
Division of Hazardous Material and Waste Management
401 KAR 2:070. Recordkeeping, operating standards, and reporting procedures.
401 KAR 2:075. Identification and listing of hazardous waste.
401 KAR 2:080. Fees.

On motion of Senator Quinlan, seconded by Chairman Brinkley, the following regulations were approved and ordered filed:

DEPARTMENT OF EDUCATION

Planning

701 KAR 1:020. State plan for the administration of ESEA, Title IV.

Bureau of Administration and Finance

School District Finance

702 KAR 3:010. Guidelines for use of foundation program capital outlay funds.

702 KAR 3:040. Check issuing policy.

702 KAR 3:161. Repeal of 702 KAR 3:160.

Buildings and Grounds

702 KAR 4:060. Construction criteria.

Bureau of Instruction

Instructional Services

704 KAR 3:292. Title I, ESEA migrant plan.

704 KAR 3:312. Follow-through plan for technical assistance grant.

Elementary and Secondary Education Act

704 KAR 10:011. Repeal of 704 KAR 10:010.

Bureau of Education for Exceptional Children

Exceptional and Handicapped Programs

707 KAR 1:003. Annual program plan for the administration of the education of the handicapped act.

KENTUCKY SCHOOL BUILDING AUTHORITY

School Building Construction

723 KAR 1:005. Funding procedures.

DEPARTMENT FOR HUMAN RESOURCES

Bureau for Health Services

Drug Formulary

902 KAR 1:316. Amitriptyline hydrochloride tablet.

902 KAR 1:328. Chlordiazepoxide hydrochloride.

Bureau for Social Insurance

Public Assistance

904 KAR 2:005. Technical requirements; AFDC.

904 KAR 2:010. AFDC; standards for need and amount.

On motion of Senator Quinlan, seconded by Representative Robinson, the meeting was adjourned at 11 a.m., to meet again on Wednesday, July 2, 1980, at 10 a.m., in Room 327 of the Capitol.

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