Administrative Register of Kentucky

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NOTE: The February meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—MONDAY, February 1, 1982, at 10 a.m., in Room 104, Capitol Annex.

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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Title		Chapter		Regulation
806	KAR	50	:	155
Cabinet, Department, Board or Agency		Bureau, Division or Major Function		Specific Area of Regulation

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Public Hearings Scheduled

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing will be held at 10 a.m., February 1, 1982, in the Eureka Room (next door to Capital Camera Shop) at the Capital Plaza Shops, Frankfort, Kentucky on the following regulations:

401 KAR 2:060. Hazardous waste site or facility permit process and application. [8 Ky.R. 505]
401 KAR 2:063. General standards for hazardous waste sites or facilities. [8 Ky.R. 542]
401 KAR 2:070. Standards applicable to generators of hazardous waste. [8 Ky.R. 508]
401 KAR 2:073. Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities. [8 Ky.R. 572]
401 KAR 2:075. Identification and listing of hazardous waste. [8 Ky.R. 513]

A public hearing will be held at 7:00 p.m., February 11, 1982, in the cafeteria of the Farmers Bank Building, Frankfort, Kentucky, on the following regulations:

405 KAR 30:025. Experimental practices. [8 Ky.R. 573]
405 KAR 30:035. General requirements for performance bond and liability insurance. [8 Ky.R. 574]
405 KAR 30:050. Bonding requirements for long-term facilities and structures. [8 Ky.R. 575]
405 KAR 30:121. Oil shale exploration. [8 Ky.R. 576]
405 KAR 30:125. Oil shale exploration performance standards. [8 Ky.R. 578]

A public hearing will be held at 10 a.m. February 4, 1982, in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky, on the following regulations:

401 KAR 59:105. New process gas streams. [8 Ky.R. 517]
401 KAR 61:035. Existing process gas streams. [8 Ky.R. 518]

Emergency Regulations Now In Effect

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 81-1029
December 14, 1981

EMERGENCY REGULATIONS
Department of Agriculture
Division of Livestock Sanitation

WHEREAS, KRS 257.030 and KRS 257.070 give the State Board of Agriculture the power to adopt, issue and enforce regulations pertaining to livestock and poultry disease control, including regulations governing animals to be imported into Kentucky; and

WHEREAS, the Kentucky Department of Agriculture cooperates with the United States Department of Agriculture in monitoring certain livestock diseases and ensuring that diseased livestock is not imported into the United States and the Commonwealth for the purpose of preventing infection of American livestock; and

WHEREAS, the equine population of the Commonwealth and United States is at risk of exposure to CEM from equine livestock imported for breeding purposes; and

WHEREAS, it is necessary for the Commonwealth of Kentucky to have in effect regulations consistent with federal regulations governing examination and treatment of CEM of equines; and

WHEREAS, the Commissioner of Agriculture has determined, and the State Board of Agriculture has concurred, that an emergency exists with respect to such regulations, since the breeding season begins in January and there are a number of mares and stallions waiting to enter Kentucky for the 1982 breeding season:

NOW, THEREFORE, I, JOHN Y. BROWN, JR., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Section 13.085(2) of the Kentucky Revised Statutes, do hereby acknowledge the finding of the Board of Agriculture and the Commissioner of Agriculture that an emergency exists and direct that the attached regulations become effective immediately upon being filed in the office of the Legislative Research Commission.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

DEPARTMENT OF ENERGY AND AGRICULTURE
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:110E. Treatment of imported mares.

RELATES TO: KRS 257.070
PURSUANT TO: KRS 13.082, 257.030
EFFECTIVE: December 23, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
NECESSITY AND FUNCTION: To establish a technique for treatment of mares imported into Kentucky from any country outside the continental United States, its territories and possessions.

Section 1. As used in this regulation, unless the context clearly requires otherwise:
(1) "Mare" means a female horse over 731 days of age.
(2) "Breeding" means natural or artificial insemination of a mare.
(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies of CFM bacterium.
(4) "Set of cultures" means a culture from the clitoral sinus (if intact), clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Any mare imported into Kentucky from any country outside the continental United States, its territories and possessions, shall, before being used for breeding, be treated by or under the direct supervision of a veterinarian licensed to practice in Kentucky, according to the following procedure:
(1) For five (5) consecutive days the veterinarian shall aseptically clean and wash external genitalia, vaginal vestibule and clitoral fossa with a solution of not less than two (2) percent chlorhexidine in a detergent base, and then coat the external genitalia and vaginal vestibule with an ointment of not less than two-tenths (0.2) percent nitrofurozone insuring that the clitoral fossa is filled.
(2) After the treatment, the mare shall undergo a seven (7) day rest period.
(3) Non-pregnant mares. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. He shall also collect one (1) additional sample from the endometrium of the uterus during estrus. All samples shall be submitted to a state or federal laboratory.
(4) Pregnant mares. These mares must remain on a state approved premise until all tests results are complete on both mare and foal. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. Seven (7) days after foaling, the veterinarian shall collect one (1) specimen from the endometrium of the uterus of the mare and one (1) specimen from the foal. If the foal is female, the specimen is to be collected from the vaginal vestibule; and, if a male, the specimen shall be collected from the prepuce. Each of these specimens shall be submitted to a state or federal laboratory for culture.
(5) If positive, the mare must remain under quarantine until three (3) additional specimens from the clitoral fossa are collected by an accredited veterinarian at intervals of not less than seven (7) days. The first set not to be collected less than one (1) year from the last positive and an additional specimen from the endometrium of the uterus during estrus is required.
(6) All mares entering Kentucky for quarantine and testing procedures must remain in the state for breeding and results of the post-breeding CF test, which shall be taken fifteen (15) to forty (40) days after the mare is bred.

Section 3. This regulation shall also apply to: (1) Any mare imported into Kentucky for breeding which has at any time been present in any country outside the continental United States, its territories and possessions, for any purpose other than racing.
(2) Any imported mare, whether used for breeding or not, which is or will be present on a breeding facility or establishment after entering Kentucky.

ALBEN W. BARKLEY II, Commissioner
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 23, 1981 at 4:15 p.m.

DEPARTMENT OF ENERGY AND AGRICULTURE
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:120E. Treatment of imported stallions.

RELATES TO: KRS 257.030
PURSUANT TO: KRS 13.082
EFFECTIVE: December 23, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
NECESSITY AND FUNCTION: To establish a technique for treatment of stallions imported into Kentucky from any country outside the continental United States, its territories and possessions.

Section 1. As used in this regulation, unless the context clearly requires otherwise:
(1) "Stallion" means a male horse other than gelding over 731 days of age.
(2) "Breeding" means natural or artificial insemination of a mare.
(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies of CEM bacterium.
(4) "Set of cultures" means a culture from the clitoral sinus, clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Any stallion imported into Kentucky from any country outside the continental United States, its territories and possessions, shall, before being used for breeding, be treated by or under the direct supervision of a veterinarian licensed to practice in Kentucky, according to the following procedure:
(1) With the stallion in full erection and while wearing disposable gloves and using disposable equipment:
(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and penetration of the folds of the sheath.

(c) Wash with clean warm water and dry.

(d) Apply an ointment containing not less than two-tenths (0.2) percent nitrofurazone liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.

(2) Repeat the treatment daily for five (5) consecutive days.

(3) After treatment procedure, the stallion must undergo a seven (7) day rest period.

(4) The stallion must breed two (2) mares that have been qualified as free of CEM by negative culture of two (2) sets of specimens collected at intervals of not less than seven (7) days and a CF test. The first set of cultures and the blood sample for the CF test must be taken at the time of estrus.

(5) The first two (2) mares bred by a stallion which has been treated as outlined in subsection (1) of this section shall be cultured from the cervix, clitoral fossa and clitoral sinuses on the second, fourth and seventh day after breeding. During the next estrus, specimens for culture shall be collected from the endometrium of the uterus, clitoral sinuses and clitoral fossa. The two (2) blood samples for the CF test shall be obtained at intervals of not less than seven (7) days and between the fifteenth and fortieth day after breeding. All tests and cultures required by this section shall be conducted at the National Veterinary Services Laboratory at Ames, Iowa. If all cultures and tests are negative, the treated stallion may be placed in service for breeding.

Section 3. This regulation shall also apply to: (1) Any stallion imported into Kentucky for breeding which has at any time been present in any country outside the continental United States, its territories and possessions, for any purpose other than racing.

(2) Any imported stallion, whether used for breeding or not, which is or will be present on a breeding facility or establishment after entering Kentucky.

ALBEN W. BARKLEY II, Commissioner
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 23, 1981 at 4:15 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 81-1061
December 23, 1981

EMERGENCY REGULATIONS
Department for Natural Resources
and Environmental Protection

WHEREAS, for the Commonwealth of Kentucky to assume exclusive jurisdiction over the regulation of Surface Coal Mining and Reclamation within the Commonwealth it must be demonstrated that the Commonwealth has the capability of carrying out the provisions of the Federal Surface Mining Control and Reclamation Act of 1977; and

WHEREAS, the Kentucky General Assembly in the 1978 and 1980 Sessions has authorized and directed the Kentucky Department for Natural Resources and Environmental Protection to achieve said exclusive jurisdiction over the regulation of surface mining and reclamation; and

WHEREAS, the Commonwealth must promulgate regulations consistent with federal requirements prior to submitting a final state program application pursuant to said Federal Surface Mining Control and Reclamation Act of 1977; 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, pursuant to 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, upon being filed with the Legislative Research Commission, become effective under the terms contained therein and as provided in KRS Chapter 350, and that 405 KAR Chapters 1 and 3 in their present form shall continue as the Commonwealth's enforceable regulatory program for surface mining and reclamation until such time as the Commonwealth is granted exclusive jurisdiction over the regulation of surface coal 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 1:005E. Applicability of chapter.

RELATES TO: KRS 350.060, 350.070, 350.085, 350.090, 350.093, 350.100, 350.130, 350.135, 350.200, 350.210, 350.220, 350.405 to .455, 350.465

PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.060, 350.465

EFFECTIVE: December 29, 1981

EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 establishes a deadline for application for interim permits, sets forth the circumstances under which interim permits may be issued, denied, revised, or amended after the date of primacy, and provides for their extension and expiration. This regulation designates Title 405 Chapters 1 and 3 as applicable to those surface coal mining and reclamation operations not covered by Title 405 Chapters 7 through 24 after the date of primacy. Furthermore, this regulation preserves Title 405 Chapters 1 and 3 for reinstatement in the event that the department is enjoined from implementing all or part of Title 405 Chapters 7 through 24.

Section 1. General. The regulations of this chapter constitute the interim regulatory program for strip mining of coal which is superseded by the permanent regulatory program for surface coal mining and reclamation operations contained in Title 405, Chapters 7 through 24. However, as set forth in the permanent program, the transition from the interim program to the permanent program does not occur immediately for all operations upon the date the permanent program becomes effective. Furthermore, the interim regulations will apply to the reclamation of areas affected under the interim program. In addition, the interim regulations may again become fully effective if the Commonwealth is enjoined by a court of competent jurisdiction from enforcing the permanent program. Therefore, this chapter shall be applicable on and after the date of primacy only as set forth below.

Section 2. Issuance of Interim Program Permits after the Date of Primacy. (1) During the first sixty (60) days after the date of primacy, the department may issue, deny, revise or amend an interim program permit under the requirements of this chapter for areas covered by an interim program application submitted prior to the date of primacy.

(2) Except as provided in subsection (3) of this section and Section 6:

(a) No application received by the department after the date of primacy will be processed under this chapter; and

(b) No interim program permit shall be issued under this chapter after sixty (60) days from the date of primacy.

(3) The department may revise a valid interim program permit at any time after the date of primacy under this chapter in order to approve changes to methods of operation and to approve incidental boundary revisions where such revision is necessary for the continuation of the operation and the revision does not include additional areas from which coal will be removed.

Section 3. Performance Standards. The performance standards of this chapter shall apply to all operations conducted under a valid interim program permit until eight (8) months after the date of primacy. Where an existing operation is allowed to continue operating after the eight (8) months period under 405 KAR 8:010E, Section 3(3), the performance standards of this chapter shall continue to apply until the interim program permit expires as set forth in Section 7 of this regulation.

Section 4. Bond Release. The bond release criteria and procedures of this chapter shall apply to all areas affected and reclaimed under a valid interim program permit.

Section 5. Bond Forfeiture. The bond forfeiture criteria and procedures of this chapter shall apply to all areas affected and reclaimed under a valid interim program permit.

Section 6. Reinstatement of Interim Program. In the event the department is enjoined by a court of competent jurisdiction from enforcing all or part of the permanent regulatory program, all or part of the provisions of this chapter shall become effective for all operations consistent with the ruling of the court.

Section 7. Extension and Expiration of Interim Program Permits. Notwithstanding the expiration date contained in the valid interim program permit, all valid interim program permits shall expire eight (8) months after the date of primacy unless the conditions of 405 KAR 8:010E, Section 3(3) are met, in which case the interim program permit shall expire on the date the department:

(a) Denies the permanent program permit; or

(b) Issues the permanent program permit, or on the thirtieth day after the date of the decision to issue, whichever is sooner.

Section 8. This regulation shall become effective on the date of primacy as defined in 405 KAR 7:020E.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:005E. Applicability of chapter.

RELATES TO: KRS 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.135, 350.151, 350.200, 350.210, 350.220, 350.405 to .440, 350.450, 350.455, 350.465

PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.060, 350.151, 350.465

EFFECTIVE: December 29, 1981

EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 establishes a deadline for application for interim permits, sets forth the circumstances under which interim permits may be issued, denied, revised, or amended after the date of primacy, and provides for their extension and expiration. This regulation designates Title 405 Chapters 1 and 3 as applicable to those surface coal mining and reclamation operations not covered by Title 405 Chapters 7 through 24 after the date of primacy. Furthermore, this regulation preserves Title 405 Chapters 1 and 3 for reinstatement in the event that the department is enjoined from implementing all or part of Title 405 Chapters 7 through 24.

Section 1. General. The regulations of this chapter constitute the interim regulatory program for suface effects of underground coal mining which is superseded by the permanent regulatory program for surface coal mining and reclamation operations contained in Title 405, Chapters 7 through 24. However, as set forth in the permanent program, the transition from the interim program to the permanent program does not occur immediately for all operations upon the date the permanent program becomes effective. Furthermore, the interim regulations will apply to the reclamation of areas affected under the interim program. In addition, the interim regulations may again become fully effective if the Commonwealth is enjoined by a court of competent jurisdiction from enforcing the permanent pro-

gram. Therefore, this chapter shall be applicable on and after the date of primacy only as set forth below.

Section 2. Issuance of Interim Program Permits after the Date of Primacy. (1) During the first sixty (60) days after the date of primacy, the department may issue, deny, revise or amend an interim program permit under the requirements of this chapter for areas covered by an interim program application submitted prior to the date of primacy.

(2) Except as provided in subsection (3) of this section and Section 6:

(a) No application received by the department after the date of primacy will be processed under this chapter; and

(b) No interim program permit shall be issued under this chapter after sixty (60) days from the date of primacy.

(3) The department may revise a valid interim program permit at any time after the date of primacy under this chapter in order to approve changes to methods of operation and to approve incidental boundary revisions where such revision is necessary for the continuation of the operation and the revision does not include additional areas from which coal will be removed.

Section 3. Performance Standards. The performance standards of this chapter shall apply to all operations conducted under a valid interim program permit until eight (8) months after the date of primacy. Where an existing operation is allowed to continue operating after the eight (8) months period under 405 KAR 8:010E, Section 3(3), the performance standards of this chapter shall continue to apply until the interim program permit expires as set forth in Section 7 of this regulation.

Section 4. Bond Release. The bond release criteria and procedures of this chapter shall apply to all areas affected and reclaimed under a valid interim program permit.

Section 5. Bond Forfeiture. The bond forfeiture criteria and procedures of this chapter shall apply to all areas affected and reclaimed under a valid interim program permit.

Section 6. Reinstatement of Interim Program. In the event the department is enjoined by a court of competent jurisdiction from enforcing all or part of the permanent regulatory program, all or part of the provisions of this chapter shall become effective for all operations consistent with the ruling of the court.

Section 7. Extension and Expiration of Interim Program Permits. Notwithstanding the expiration date contained in the valid interim program permit, all valid interim program permits shall expire eight (8) months after the date of primacy unless the conditions of 405 KAR 8:010E, Section 3(3) are met, in which case the interim program permit shall expire on the date the department:

(a) Denies the permanent program permit; or

(b) Issues the permanent program permit, or on the thirtieth day after the date of the decision to issue, whichever is sooner.

Section 8. This regulation shall become effective on the date of primacy as defined in 405 KAR 7:020E.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 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) "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.

(4) "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.

(5) "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.

(6) "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.

(7) "Application" means the documents and other information filed with the department for the issuance for exploration approval or a permit.

(8) "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, Section 10, and 405 KAR 16:210E; or 405 KAR 18:100E, 405 KAR 18:060E, Section 9, and 405 KAR 18:220E.

(9) "Aquifer" means a zone, stratum, or group of strata

that can store and transmit water in sufficient quantities for a specific use.

(10) "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.

(11) "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.

(12) "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 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 Title 405, Chapters 16 and 18. 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.

(13) "Bureau" means the Bureau of Surface Mining Reclamation and Enforcement.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(16) "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) 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 where such activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(17) "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.

(18) "Coal processing waste" means earth materials which are separated from product coal, and slurred or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

(19) "Collateral bond" means an idemnity 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 certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(21) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "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.

(24) "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.

(25) "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (PL 95-87).

(26) "Day" means calendar day unless otherwise specified to be a working day.

(27) "Department" means the Department for Natural Resources and Environmental Protection.

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "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.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) "Embankment" means a man-made 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.

(33) "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.

(34) "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 applicability date of this regulation as specified in Section 3.

(35) "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.

(36) "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.

(37) "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.

(38) "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.

(39) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(40) "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.

(41) "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 concentration 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 other than coal.

(42) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(43) "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.

(44) "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.

(45) "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, finance construction.

(46) "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.

(47) "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(48) "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(49) "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.

(50) "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(51) "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, or sites for which historic designation is pending.

(52) "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:

1. The application; or
2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 above shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a), other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and
2. Lands that the department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Aquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(53) "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.

(54) "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.

(55) "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.

(56) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(57) "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. Lands 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.

(58) "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, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(59) "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 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.

(60) "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.

(61) "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.

(62) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(63) "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.

(64) "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.

(65) "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.

(66) "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.

(67) "Noxious plants" means species classified under Kentucky law as noxious plants.

(68) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(69) "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.

(70) "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 or who removes overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit.

(71) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the department when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by departmental inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a departmental inspection, any condition or practice; or any violation of KRS Chapter 350, Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(72) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(73) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(74) "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.

(75) "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."

(76) "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.

(77) "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.

(78) "Permit" means written approval issued by the department to conduct surface coal mining and reclamation operations.

(79) "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.

(80) "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.

(81) "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(82) "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 by any related action of the department; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the department.

(83) "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.

(84) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(85) "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.

(86) "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock.

(87) "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.

(88) "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.

(89) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(90) "Public building" means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(91) "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.

(92) "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.

(93) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(94) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(95) "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.

(96) "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.

(97) "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(98) "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.

(99) "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.

(100) "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.

(101) "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.

(102) "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.

(103) "Secretary" means the Secretary of the Department for Natural Resources and Environmental Protection.

(104) "Sedimentation pond" means a primary sediment controlled 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.

(105) "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.

(106) "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.

(107) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(108) "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 that 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.

(109) "Soil survey" means a field or 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.

(110) "Spoil" means overburden that has been removed during surface coal mining operations.

(111) "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.

(112) "Steep slope" means any slope of more than twenty (20) degrees.

(113) "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(114) "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.

(115) "Surety bond" means an idemnity 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.

(116) "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, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(117) "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, land 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.

(118) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(119) "Suspended solids" or nonfilterable residue, expressed as miligrams 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).

(120) "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.

(121) "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(122) "Topsoil" means the A soil horizon layer of the three (3) major soil horizons.

(123) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(124) "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 is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(125) "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.

(126) "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.

(127) "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.

(128) "Undeveloped land or no current use or land management" means land that is undeveloped or, if previoulsy developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(129) "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, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions.

(130) "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.

(131) "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.

(132) "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, committed by a person who intends the result which actually occurs.

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—milligram
MRP—mining and reclamation plan
MSHA—Mine Safety and Health Administration
NPDES—National Pollutant Discharge Elimination System
OSM—Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior
SCS—Soil Conservation Service
SMCRA—Surface Mining Control and Reclamation Act of 1977, PL 95-87
USDA—United States Department of Agriculture
USDI—United States Department of the Interior
U.S. EPA—United States Environmental Protection Agency
USGS—United States Geological Survey

Section 3. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 28, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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) Surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of SMCRA; and
(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.

Section 2. 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 3. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 28, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 filed a written notice of intention to explore or 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. 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 3. 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 4. 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 either are not required by, or are 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 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 a permanent program permit is required under 405 KAR 8:010E.

(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 and certified by a registered professional engineer. Upon completion of reconstruction, the responsible engineer shall certify to the department, within fourteen (14) days thereafter, that the reconstruction was performed in accordance with the approved design plans.

Section 5. Hazard Classifications for Impoundments. (1) For proposed new sedimentation ponds or other new impoundments and those proposed for reconstruction pursuant to Section 4(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, 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 interruptions 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 site and 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 6. Reports Required. The operator shall submit such 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 7. 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 (2) months after the date specified in Section 11.

Section 8. 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 9. 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 4.

Section 10. Certifications by Registered Professional Engineers. (1) A document required to be certified shall be rejected by the department as incomplete if its accuracy is not so attested.

(2) Certification by a qualified registered professional engineer as required by this Title means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of KRS Chapter 350 and this Title, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and appropriate direct participation and/or supervision by the registered professional engineer. Such certification does not require that the registered professional engineer provide a warranty or guarantee, or assume any liability other than that normally incurred in the practice of engineering.

(3) Certification of maps, plans, and drawings. Where this Title requires that maps, plans, and drawings be certified by a qualified registered professional engineer, the registered professional engineer shall certify:

(a) That the information or documentation contained in the map, plan, or drawing is correct as determined by accepted engineering practices; and

(b) That the map, plan or drawing includes all the information required by KRS Chapter 350 and KAR Title 405.

(4) Certification of designs. Where this Title requires that a qualified registered professional engineer design and certify a facility, he or she shall certify that:

(a) The design is in accordance with accepted engineering practices and recognized professional standards;

(b) The design complies with the design requirements of KRS Chapter 350 and KAR Title 405; and

(c) Provided the facility is properly constructed, operated, and maintained, the design is adequate for the facility to meet the applicable performance standards of KRS Chapter 350 and KAR Title 405 insofar as such performance can reasonably be predicted by accepted engineering practices.

(5) Certification of construction. (a) Where this Title requires that a qualified registered professional engineer certify that a facility was constructed in accordance with the design approved by the department, he or she shall certify:

1. That adequate inspections were conducted by the qualified registered professional engineer or by persons under his or her supervision;

2. That the construction was performed in accordance with accepted construction practices; and

3. Either that the facility was constructed in accordance with the design approved by the department, or that the facility was constructed in accordance with the design approved by the department except for certain minor deviations which will not adversely affect the performance of the facility nor render the facility in violation of KRS Chapter 350 and KAR Title 405.

(b) Any minor deviations shall be described in the certification document and the effect of the deviations upon the performance of the facility shall be explained.

(c) As-built drawings shall be submitted as a part of the certification.

(6) Certification of maintenance. Where this Title requires that a qualified registered professional engineer certify the maintenance of a structure, he or she shall certify that:

(a) An inspection of the structure was conducted by the registered professional engineer or by a person under his or her supervision; and

(b) Based on that inspection, the registered professional engineer has determined that the structure has been maintained as required by this Title.

(7) Certifications shall be made in the form prescribed by the department, and the department may reject any cer-

tification which is not made in such form. Certifications must be notarized.

Section 11. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 28, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 Director of OSM.

(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 Director of OSM. 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 is 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 Director of OSM 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 finds 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 Director of OSM, that:

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

(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 Director of OSM, based on the Director's findings that all of the requirements of subsection (2)(a) through (e) 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 Director of OSM.

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 Director of OSM 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 permit term. After review, the department shall, with the consent of the Director of OSM, require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety.

(2) Administrative review of modification order. Any person who is or may be adversely affected by an order pursuant to subsection (1) shall be provided with an opportunity for a hearing as established in 405 KAR 7:090E.

Section 4. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 28, 1981 at 10 a.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 7:080E. Small operator assistance.

RELATES TO: KRS 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in any other manner whatsoever, by the applicant.

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a five (5) percent interest.

(c) All coal produced by persons who own more than five (5) percent of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in any other manner whatsoever.

(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the applicant.

(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; and
(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. Pursuant to Sections 1 through 4, data and information required to be contained in permit applications under the regulations listed in this subsection, shall 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 consequences 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. Allocation of Funds. If available funds are not sufficient to provide services under this regulation to all eligible applicants, the department shall allocate the available funds among eligible applicants based upon a formula which shall include, but shall not be limited to, the following factors;
(1) Date of filing of application for assistance;
(2) Anticipated date of filing a permit application;
(3) Anticipated date for commencing mining operations; and
(4) Performance history.

Section 10. 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 of 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 acquistion 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 11. 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 12. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 28, 1981 at 10 a.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: December 29, 1981

EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) and (4); orders to abate and alleviate; determinations 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.

Section 3. Proposed Penalty Assessment. (1) The department shall notify any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel within the Bureau of Surface Mining Reclamation and Enforcement.

(2) In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.

(3) The department shall send its notice of the proposed penalty assessment, together with copies of applicable worksheets, to the person against whom the assessment is proposed within fifteen (15) working days after issuance of the final notice of inspection of noncompliance. The notice of assessment shall be sent by certified mail, return receipt requested, or by registered mail, addressed to the agent for service or the permanent address shown on the permit application; or if no address is shown on the application, to such other address as is known to the department.

(4) (a) The person to whom a proposed penalty assessment was sent who chooses not to contest the fact of the violation or the assessment shall pay the proposed penalty assessment in full to the department within thirty (30) days from the date of mailing of the assessment.

(b) The person to whom a proposed penalty assessment was sent may contest the penalty, as well as the fact of the violation, by attending the preliminary hearing scheduled pursuant to Section 4 of this regulation or by requesting a formal hearing in writing pursuant to Section 5(2). Prepayment of penalties shall be made as provided therein.

Section 4. Preliminary Hearings. (1) Following issuance by the department of a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the department shall schedule a preliminary hearing on the fact of the violation and the proposed penalty assessment. The preliminary hearing shall be held no later than sixty (60) days after the date of mailing of the proposed penalty assessment: Provided that, where the preliminary hearing is to consider a notice or order requiring cessation of mining by a permittee, such hearings shall be held within thirty (30) days of the issuance of such notice or order. The scheduling of the preliminary hearings shall not operate as a stay of any notice or order.

(2) Notice of the preliminary hearing shall be sent by certified mail, return receipt requested, to the person to whom the notice or order was issued. Notice shall also be sent to any person who filed a report which led to the notice or order being contested. The department shall post notice of the preliminary hearing at the regional office closest to the minesite at least five (5) days before the hearing. Any person shall have the right to attend and participate in the preliminary hearing.

(3) If a preliminary hearing is held before the time provided in Section 3 for mailing of the proposed penalty assessment, the department may propose such assessment at the preliminary hearing.

(4) The person contesting the assessment need not pay the proposed amount into escrow prior to the preliminary hearing, but may wait and make payment pursuant to subsection (7) of this section, unless such person waives the preliminary hearing, in which case the payment provisions of subsection (6) shall apply.

(5) The hearing officer may make a preliminary determination to affirm, raise, lower, or vacate the proposed penalty, or to terminate, modify, or vacate the notice or order with which the preliminary hearing is concerned. The hearing officer shall state his or her reasons therefor in writing and with particularity. Within thirty (30) days after the preliminary hearing is held, the department shall send by certified mail, return receipt requested, or by registered mail, notice of the hearing officer's determination to the parties to the hearing and to any person who filed a report which led to the issuance of the notice or order which was the subject of the preliminary hearing.

(6) The person to whom the notice or order was issued may, within the time limit specified in the preliminary hearing notice, waive the preliminary hearing in writing and request a formal hearing to contest either the fact of the violation or the proposed penalty assessment, or both. Such person must forward to the department the proposed penalty assessment for placement into an escrow account, within thirty (30) days after mailing of the proposed assessment.

(7) (a) An authorized representative of the department shall attend the preliminary hearings.

(b) If a person to whom a notice or order was issued fails without good cause to attend the scheduled preliminary hearing or to comply with subsection (6) above, he or she may be deemed to have waived all rights to contest the fact of the violation or the proposed penalty, and the department may enter a final order containing the findings set forth in Section 5(2)(c) of this regulation.

(c) If an agreement is reached at the preliminary hearing, the department shall present in person or send by certified mail, return receipt requested, or by registered mail, a written settlement agreement to the person to whom the notice or order was issued. Such person shall sign the settlement agreement upon presentation immediately following the preliminary hearing or return it to the department within ten (10) days of the date on which it was mailed. The parties to the agreement will be deemed to have waived their 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 of the violation or violations concerned. The penalty agreed to shall be due and payable thirty (30) days after signing of the settlement agreement. Failure to return the signed settlement order within ten (10) days after its presentation or mailing by the department shall render the agreement void. The hearing officer shall then issue his or her preliminary determination not later than thirty (30) days after the preliminary hearing was held, and the provisions of paragraph (d) shall apply.

(d) If no agreement is reached, any party may, within fifteen (15) days after the presentation or mailing of the hearing officer's determination following the preliminary hearing, request a formal hearing pursuant to Section 5. Any such request by the person to whom the notice or order was issued shall be accompanied by payment of an amount equal to the proposed penalty (as amended or affirmed pursuant to the preliminary hearing) to the department, to be held in escrow. If the department is the party requesting a formal hearing, the payment into escrow need not be made. Failure to request a formal hearing or to submit payment within the prescribed time shall be deemed a waiver of all rights to further hearings or review of the matter, and shall be grounds for issuance of a final order of the department pursuant to Section 5(2)(c).

(8) The hearing office shall terminate any preliminary hearing when he or she determines that the dispute cannot be resolved or that the parties are not diligently pursuing a resolution of the dispute.

(9) No person who presided at a preliminary hearing shall either preside at a subsequent hearing in the same

matter or participate in any further decision or any subsequent administrative appeal.

Section 5. Formal Hearing. (1) Except as provided in subsection (2) of this section, any person aggrieved by an order or determination of the department may request in writing, 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 requester has had actual notice of the action, or could reasonably have had such notice.

(2) (a) Any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance may request a de novo formal hearing with the department pursuant to Section 4(6) or Section 4(7)(d). Such request shall be sent by certified mail, return receipt requested, or by registered mail, to the central office in Frankfort.

(b) The request for a hearing shall include a short and plain statement why the amount of the penalty proposed to be assessed, or the fact of the violation, or both, is being contested. The request for a hearing shall plainly identify the notice or order that the requester is contesting. The request shall not operate as a stay of any order or notice.

(c) Failure to request a formal hearing in a timely manner shall be considered a waiver of the right to contest the fact of the violation or the proposed penalty assessment. If no request for a formal hearing is made within fifteen (15) days after the mailing of the hearing officer's preliminary determination following the preliminary hearing, the department shall forthwith enter and mail by certified mail, return receipt requested, or by registered mail, a final order finding:

1. That the person should be considered to have waived his or her right to a hearing;

2. That the findings and conclusions contained in the preliminary determination of the hearing officer should be deemed admitted; and

3. That the proposed penalty assessment, as adjusted by the hearing officer following the preliminary hearing, is due and payable to the department within fifteen (15) days.

(3) (a) The department may initiate show cause proceedings whenever:

1. It has reason to believe that a violation of KRS Chapter 350 or Title 405, Chapters 7 through 24 has occurred or is occuring; or

2. A permittee has failed to pay a civil penalty assessed in a final order of the department.

(b) The department shall initiate show cause proceedings whenever:

1. The department has reason to believe that additional remedies should be sought or order entered against any person to protect the environment or the health or safety of the public; or

2. The permittee has willfully failed to comply with an order for cessation and immediate compliance; or

3. The department has determined, pursuant to paragraph (f) of this subsection, that a pattern of violations of any requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit conditions 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.

(c) The complaint 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 department shall:

1. If practicable, publish notice of the show cause order, 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 or counties of the surface coal mining and reclamation operations or coal exploration operation; and

2. Post the notice at the appropriate regional office of the bureau.

(d) If the permittee requests a hearing on the show cause order, a formal hearing shall be provided pursuant to this regulation. The department shall give at least twenty-one (21) days' written notice of the date, time, and place of hearing to the permittee and any intervenor and shall post notice at the appropriate regional office of the bureau.

(e) The department may decline to issue a show cause order, or may vacate an outstanding show cause order, if it finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of the case.

(f) The department shall determine that a pattern of violations exists if it finds 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. 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:

1. The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions;

2. The number of violations, cited on more than one (1) occasion, of different requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions; and

3. The extent to which the violations were isolated departures from lawful conduct.

(g) In determining the number of violations within any twelve (12) month period, the department shall consider only violations issued as a result of inspections carried out on or after May 3, 1978. The department may consider violations issued as a result of other inspections in determining whether to exercise its discretion under paragraph (f) of this subsection.

(h) If the department revokes or suspends the permit or exploration approval, the permittee shall immediately cease surface coal mining operations on the permit area shall:

1. If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

2. If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(4) Notice of hearing. Upon request pursuant to subsection (1) or (2) of this section, or upon initiation by the department pursuant to subsection (3), the department shall schedule a hearing before the department to be held 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. The notice of hearing shall be served in person, or sent by certified mail, return receipt requested, or by registered mail; and 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 granting of the hearing.

(5) Prior to a formal hearing, and upon seven (7) days' written notice to all parties, delivered personally or sent by certified mail, return receipt requested, or by registered mail, the hearing officer may hold a pre-hearing conference to consider simplification of the issues, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and such other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at such a conference by stipulation, settlement, agreed order, or default for non-appearance. The parties may hold such additional conferences as may be proper to resolve any issue in dispute.

(6) (a) All formal hearings shall be de novo. 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. The department may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations may be administered by the hearing officer or court reporter. The pertinent provisions of the Kentucky Rules of Civil Procedure shall apply to cases before the department, consistent with KRS Chapter 350 and these regulations. The hearing officer shall permit any party to represent himself. 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.

(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 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) Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement or matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended orders, 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. When certified as a true and correct copy of the testimony by the department, the transcript shall constitute the official transcript of the evidence.

(7) The hearing officer shall make a determination after hearing and based on substantial evidence appearing in the record as a whole, setting forth whether the violation did in fact occur, the amount of the penalty recommended by the hearing officer, and remedial or compliance actions recommended to be taken by the permittee. The hearing officer may order suspension or revocation of a permit or forfeiture of a bond. The hearing officer shall require a person or permittee in a recommended 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, or any permit condition, which violations are found to exist on the basis of substantial evidence.

(8) The civil penalties assessed for violations of KRS Chapter 350, Title 405, Chapters 7 through 24 or for violation of any permit condition shall be part of the affirmative case presented by the department. 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, and shall consider the same factors set forth above at Section 3(2) for consideration in setting proposed penalty assessments. 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.

(9) (a) Except as provided in Section 8 for permit hearings, the hearing officer shall, within thirty (30) days of the close 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 any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer as the department's final order, or issue his or her own final order based on the hearing officer's report and any exceptions thereto.

(b) 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.

(c) 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.

(d) 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.

(10) There shall be no ex-parte communications between representatives of the parties and the hearing officer.

(11) 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).

Section 6. Location of Hearings. Preliminary hearings and formal hearings shall, upon request of the person to whom the notice or order was issued, be held at or reasonably close to the minesite, or at any other location acceptable to the parties. 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 or her discretion.

Section 7. Temporary Relief. (1) Pending the completion of the investigation and hearings provided for in this regulation, the chief hearing officer may grant temporary relief from any notice or order issued pursuant to 405 KAR 12:020E or permit determination of the department. Any request for such relief shall be in writing and shall contain a detailed statement giving reasons why such relief should be granted. The chief hearing officer may grant such temporary relief after making a written finding that such relief is warranted, and shall state the reasons for his or her finding. The chief hearing officer shall grant or deny such relief expeditiously: Provided that, where the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), the chief hearing officer shall grant or deny such temporary relief within five (5) days of receipt of such request.

(2) The chief hearing officer may grant temporary relief from notices and orders of the department issued pursuant to 405 KAR 12:020E, under such conditions as he or she may prescribe, if:

(a) A hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the department and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) 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 such person; and

(c) 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.

(3) Where a person requests temporary relief from a permit or coal exploration determination, the chief hearing officer may, under such conditions as he or she may prescribe, pending final determination of the proceeding, grant such temporary relief as he or she deems appropriate, if:

(a) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief.

(b) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not effect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the department.

Section 8. Review of Permit and Coal Exploration Determinations. Review of determinations by the department on permits and revisions and renewals thereof, concerning issuance; denial; imposition of conditions; application for transfer, sale, or assignment of rights; or applications for coal exploration 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). The burden of proof shall be on the party seeking to reverse the determination of the department. Temporary relief may be requested pursuant to Section 7 of this regulation.

Section 9. Orders to Abate and Alleviate. Whenever the secretary, pursuant to KRS 224.071, issues an order to abate and alleviate, the department shall, as soon as possible, not to exceed ten (10) days thereafter, provide the person to whom the order was issued an opportunity to be heard. 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 obligations have been met or that the order was improper or inappropriate.

Section 10. 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 or who violates any determination or order promulgated pursuant to the provisions therein, may be assessed a civil penalty of not more than $5,000 for each day during which such violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against any person issued an order pursuant to KRS 350.130(4).

(2) Whenever a violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which such violation continues, up to a maximum of thirty (30) days: Provided that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 7 of this regulation, following a determination that the person requesting relief will suffer irreparable loss or damage from the application of the requirements, then the abatement period shall be extended until the date when the department issues its final order concerning 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) 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.

(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 completion of the review. 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 proposed penalty, the department shall within thirty (30) days of 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 11. Intervention and Consolidation. (1) Any person may petition in writing for leave to intervene at any stage of a proceeding under this regulation.

(2) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why that interest is or may be adversely affected.

(3) Unless the petitioner's interest is adequately represented by existing parties, the hearing officer shall grant intervention where the petitioner:

(a) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(4) If neither paragraph (a) nor paragraph (b) of subsection (3) above applies, the hearing officer shall consider the following in determining whether intervention is appropriate:

(a) The nature of the issues;

(b) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's implementation of its statutory mandate.

(5) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the hearing officer.

(6) When proceedings involving the same permittee or a common question of law or fact are pending before the department, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Costs and Expenses. (1) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any proceeding held pursuant to this regulation which results in a final order of the department.

(2) The petition for an award of costs and expenses, including attorneys' fees, must be filed with the hearing officer who issued the final order within forty-five (45) days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(3) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of such costs and expenses; and

(c) Where attorneys' 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.

(4) Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

(5) Appropriate costs and expenses including attorneys' fees may be awarded by the department to any person as the secretary deems proper.

(6) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under this regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 number 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 28, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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. The regulation sets forth petition requirements, time limits, and other aspects of the rulemaking petition process.

Section 1. Petitions for Rulemaking. (1) 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. The department will not accept a petition relating to a regulation that is in the process of being promulgated or amended under the normal promulgation procedures of KRS Chapter 13 since the petitioner is provided an opportunity to be heard under those procedures. Similarly, the department will not accept a petition on an emergency regulation where the department is intending to or has initiated the regular promulgation process under KRS Chapter 13.

(2) The person petitioning for a rulemaking shall make his or her petition in writing and shall set forth the facts, technical justification and law which support the petition. The facts and the technical justification must be sufficient for the department to make a decision as to the merits of the petition within the time required below. Insufficient facts and technical justification shall be grounds for denial of the petition. The petition shall set forth the basis in law for the proposed rulemaking and shall justify the proposal as being neither more nor less stringent than allowed by SMCRA and KRS Chapter 350.

(3) Upon submission of a petition, the petitioner shall publish notice of submission of the petition in newspapers designated by the department according to KRS Chapter 424. The notice shall briefly identify the subject of the petition, state that copies are on file for public review at the Frankfort office of the department, and state that any person may within fifteen (15) days of publication of the notice request a public hearing on the petition by written request to the department. The notice shall also state that anyone requesting a hearing will be informed by letter from the department of the time and place of the hearing.

(4) A petition will not be deemed complete until the petitioner submits to the department a copy of the published notice and proof of publication of the notice in the form of an affidavit from the publishers.

(5) The department will hold any requested public hearing within thirty (30) days of the filing of the complete petition. The hearing shall be legislative in nature.

(6) The secretary shall render a final order granting or denying the petition within thirty (30) days after the hear-

ing or within sixty (60) days of the filing of the complete petition if no hearing was requested. 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.

(7) If a petition is granted proposing the issuance, amendment or repeal of regulations which were the subject of the petition, the secretary shall initiate the rulemaking proceeding pursuant to KRS Chapter 13 within thirty (30) days of the final order granting the petition.

(8) 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.

Section 2. Suspension of Regulations. The secretary may, on a case-by-case basis, suspend any regulation or portion of 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; or when the secretary determines that the state regulation is inconsistent with KRS Chapter 350 due to changes in the corresponding federal regulation. 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.

Section 3. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 28, 1981 at 10 a.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: December 29, 1981

EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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) Permanent program permits required. On and after the date of primacy, no person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by such operations; except that, a person holding a valid interim program permit issued under Title 405, Chapters 1 or 3 is not required to obtain a permanent program permit until eight (8) months after the date of primacy for areas covered by the valid interim program permit that will be affected by surface coal mining operations after eight (8) months after the date of primacy.

(2) General filing requirements for permanent program permits:

(a) New areas permitted under the permanent program. Each person who intends to engage in surface coal mining and reclamation operations on an area not covered by a valid interim program permit shall file a complete application for a permanent program permit 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 permanent program permits. An application for renewal of a permit under Section 21 shall be filed with the department at least 120 days before the expiration of the permit.

(c) Revision of permanent program 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 term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program 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.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23, but shall not begin surface coal mining and reclamation operations on such areas until the amendment is approved by the department. The term of a permit shall remain unchanged by an amendment.

(f) Filing requirements for persons holding valid interim program permits:

1. Persons who hold valid interim program permits to

engage in surface coal mining and reclamation operations, and who will not engage in surface coal mining operations on such permit areas after eight (8) months after the date of primacy, are not required to submit applications for permanent program permits for such operations.

2. Notwithstanding any litigation contesting the approval of the Commonwealth's permanent regulatory program by the Secretary of the Interior, each person who holds a valid interim program permit to engage in surface coal mining and reclamation operations, and who intends to engage in surface coal mining operations on such permitted area after eight (8) months from the date of primacy, shall not later than two (2) months after the date of primacy file a substantially complete application, with such form and content as specified by the department, for a permanent program permit for those portions of the previously permitted area which will be affected by surface coal mining operations eight (8) months after the date of primacy. The applicant shall complete the application as soon as possible after the two (2) months period, but no later than eight (8) months after the date of primacy.

3. Applications which are not submitted within the two (2) months period required by subparagraph 2 of this paragraph shall be treated as applications submitted in accordance with paragraph (a) of this subsection and shall not make the applicant eligible for the interim program extension under Section 3(3) and (4).

(3) Compliance with permits. Any person engaging in 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 applicable requirements of KRS Chapter 350 and Title 405.

Section 3. Interim Program Permits. (1) Issuance of interim program permits after the date of primacy. During the first sixty (60) days after the date of primacy, the department may issue, deny, revise or amend an interim program permit under the requirements of 405 KAR 1:005E or 405 KAR 3:005E for areas covered by an interim program application submitted prior to the date of primacy. Except as provided in subsection (2) of this section and Section 6 of 405 KAR 1:005E and 405 KAR 3:005E:

(a) No application received by the department after the date of primacy will be processed under 405 KAR 1:005E or 405 KAR 3:005E; and

(b) No interim program shall be issued under 405 KAR 1:005E or 405 KAR 3:005E after sixty (60) days from the date of primacy.

(2) Revision of interim program permits after the date of primacy. The department may revise a valid interim program permit at any time after the date of primacy under 405 KAR 1:005E or 405 KAR 3:005E in order to approve changes to methods of operation and to approve incidental boundary revisions where such revision is necessary for the continuation of the operation and the revision does not include additional areas from which coal will be removed.

(3) Continued operation under interim program permits beyond eight (8) months after the date of primacy. A person engaging in surface coal mining and reclamation operations under a permit issued by the department in accordance with the requirements of the interim regulatory program under KRS Chapter 350 may engage in surface coal mining operations on those permitted areas beyond eight (8) months after the date of primacy if and only if:

(a) The person has applied for a permanent program permit under this chapter as required by Section 2(2)(f)2; and

(b) The department has not yet:

1. Denied the permit with respect to such application; or

2. Received the applicant's bond and issued the permit with respect to such application within thirty (30) days of the decision to issue the permit; and

(c) The operations are conducted in compliance with Title 405, Chapters 1 and 3, the applicable requirements of KRS Chapter 350 and all terms and conditions of the interim program permit.

(4) Extension and expiration of interim program permits. Notwithstanding the expiration date contained in the valid interim program permit, all valid interim program permits shall expire eight (8) months after the date of primacy unless the conditions of subsection (3) of this section are met, in which case the interim program permit shall expire on the date the department:

(a) Denies the permanent program permit; or

(b) Issues the permanent program permit or on the thirtieth day after the date of the decision to issue, whichever is sooner.

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 department. 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 fifteen (15) working days after filing, an onsite investigation of the area with the person or his or her 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, including a copy to be filed for public inspection under Section 8(8).

(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. Where applicable, maps shall be prepared by or under the direction of a qualified registered professional engineer, shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified by the registered professional engineer.

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 and, where required by this Title, shall be certified by the registered professional engineer.

(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 August 3, 1977;

2. Between August 3, 1977 and May 3, 1978 (January 1, 1979 for persons who received a small operator's exemption in accordance with 405 KAR 1:030 or 405 KAR 3:030);

3. Between May 3, 1978 (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 eight (8) months after the date of primacy;

4. After issuance of the permit.

(7) Certifications by professional engineers. All certifications required to be made by professional engineers shall be in accordance with 405 KAR 7:040E, Section 10.

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 except that no acreage fees shall be required for surface areas overlying underground workings which are not affected by surface operations and facilities.

(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 first advertisement shall be published on or after the date the application is submitted to the department. The applicant may elect to begin publication on or after the date the applicant receives the notification from the department under Section 13(1) that the application is deemed complete. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the department that the application is deemed complete.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the department until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publica-

tion of the advertisement, the applicant shall submit to the department proof of publication of the required final four (4) consecutive weekly 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 permit 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 application number.

(6) Within five (5) working days of the date of notification to the applicant as to the initial completeness of the application under Section 13(1), 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) In accordance with Section 12, the department shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate Regional Office of the Bureau where the mining is proposed to occur, 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 after the date of the written notification by the department pursuant to Section 8(6) and (7).

(3) The department shall immediately file a copy of all such comments at the appropriate Regional Office of the Bureau for public inspection 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 government 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 at the appropriate Regional Office of the Bureau for public inspection under Section 8(8).

Section 11. Permit 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 a permit conference is requested in accordance with subsection (1) of this section, the department shall hold a conference within twenty (20) working days after the last date to request such conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be advertised once 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 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 conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit 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, 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) Initial completeness determination. Within fifteen (15) working 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.

(a) 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 (1) 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.

(b) Small operator applications. For an application submitted by a small operator as defined by KRS 350.450(4)(d), the notification of initial completeness required by this subsection 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 within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, 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.

(c) For applications submitted under Section 2(2)(f)2, this subsection applies at the time of submission of the complete application, but not at the time of submission of a substantially complete application. Also, the time limits for department action under this subsection shall not apply to applications submitted under Section 2(2)(f)2 due to the large number of such applications which will be submitted in a short period of time. The department will conduct the completeness determination for such applications as expeditiously as possible.

(2) Processing of complete application. Within the time periods set forth in Section 16, the department shall either:

(a) Notify the applicant of the department's decision to issue or deny the application; or

(b) 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.

(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.

(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. In this case, the permit shall contain a condition requiring that if the administrative or judicial hearing authority either denies a stay applied for in the appeal, or affirms the violation, then any surface coal mining operations being conducted under the permit shall be terminated unless and until the permittee complies with the provisions of paragraph (a) of this subsection. For loss of appeal on violations of laws or regulations of the United States or states other than Kentucky, operations shall be terminated under this paragraph only when the department has actual, verified notice of the loss of appeal and the subsequent failure of the permittee to correct or begin correcting the violation; and such termination shall be set aside by the department only when the department has actual, verified notice that the permittee has corrected the violation or is in the process of correcting the violation.

(4) No permit shall be issued if the department determines 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. Before any final determination by the department pursuant to this subsection 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 material 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 and 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.).

(16) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited such bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid such sum as the department finds is adequate to reclaim such lands.

(17) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has com-

plied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the department that such violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(18) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(19) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the department are incorporated into the permit application and the surface coal mining operation is jointly approved by all affected agencies as set forth under 405 KAR 24:040E.

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 4, 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) A complete application submitted to the department under Section 2(2)(f)2 shall be processed by the department so that an application is approved or denied within eight (8) months after the date of primacy, in accordance with KRS 350.060(2).

(b) 1. Except as provided for in paragraph (c) of this subsection, a complete application submitted under Section 2(2)(a), (b), (d), and (e) shall be approved or denied within sixty-five (65) working days after the notice of completeness under Section 13(1), except that periods of temporary withdrawal under Section 13(2)(b) shall not be counted against the sixty-five (65) working-day period available to the department.

2. Except as provided in paragraph (c) of this subsection, a complete application submitted under Section 2(2)(c) of a major revision as provided in Section 20 shall be approved or denied within forty-five (45) working days after the notice of completeness under Section 13(1), except that periods of temporary withdrawal under Section 13(2)(b) shall not be counted against the forty-five (45) working-day period available to the department.

3. A complete application submitted under Section 2(2)(c) for a minor revision as provided in Section 20 shall be approved or denied within fifteen (15) working days after the notice of completeness under Section 13(1), except that periods of temporary withdrawal under Section 13(2)(b) shall not be counted against the fifteen (15) 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 paragraph (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.

(d) Where an application submitted under Section 2(2)(f)2 also contains, within the proposed permit area, new lands which are not covered by a valid interim program permit, that application shall be processed under paragraph (a) of this subsection.

(2) If a permit 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 permit 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) 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.

(6) 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 permittee 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 of this regulation; Section 3 of 405 KAR 7:060E; Sections 4, 6, and 7 of405 KAR 8:050E; 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 permittee 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 necessary 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. Utilizing 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. Issued and outstanding permits will be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, including reevaluation of the bond.

(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 and reclamation operations described in the existing application and approved under the current permit.

(b) When a revision is 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) Major revision.

(a) A revision is a major revision if the proposed change is of such scope and nature that the department determines that public notice is necessary to allow participation in the department's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postming land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variences to approximate original contour requirements;

4. Construction or relocation of roads, where such construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;
7. Changes which may cause major impacts on the hydrologic balance;
8. Incidental boundary revisions that affect new watersheds;
9. Incidental boundary revisions that include diversions of perennial streams;
10. Incidental boundary revisions that include new areas from which coal will be removed, provided that such revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2); 14(1) through (6), (8), (10) through (15); 15; 16; 18; and 24. In addition to the requirements of Section 8(5), the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the department to be major revisions are minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2); 14(1) through (6), (8), (10) through (15); 15; 16(1), (3), (4)(a), (5); 18; and 24.

(b) If the department determines that a proposed minor revision is actually a major revision during the initial completeness determination under Section 13, the department shall so inform the applicant and return the application.

(c) The department shall notify, in writing, those persons, if any, that the department determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Fees. Applications for major and minor revisions shall include a basic fee of $250. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of fifty dollars ($50) per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which are not affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal of bond expiration of the term of the permit, in accordance with subsections (2) and (4) of this section. Permit renewal shall not include approval for extension of the permit area beyond the boundaries of the current 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 2(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;
3. Evidence that liability insurance under 405 KAR 10:030E, Section 4, will be provided by the applicant for the proposed period of renewal; and
4. A fee of $250.

(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) 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 subsection (2) 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 administrative and judicial review set forth in Section 24.

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: a fee of $250; 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 the 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 fifteen (15) days from the date of publication of the advertisement.

(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. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit can be approved under Sections 20 or 21; revisions and renewals. All such extensions must be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the department may so amend the original permit provided that the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under this Title.

Section 24. Administrative and Judicial Review. (1) Following 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:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the department in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the department fails to act within time limits specified in KRS Chapter 350 or Title 405, Chapters 7 through 24.

Section 25. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 8:010E, Section 24.

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:

(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 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;

(g) A justification of the necessity to remove more than 250 tons of coal from the area during exploration;

(h) A fee of $250.

(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 publication of the public notice under paragraph (a) of this subsection.

(4) Processing of applications.

(a) Within ten (10) working 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. Requires that more than 250 tons of coal be removed and the department is satisfied that removal of more than 250 tons of coal is justified.

(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 8:010E, Section 24.

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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 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 during the five (5) years preceding the application 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 all MSHA identification numbers that have been assigned for the mine and all sections.
(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.
(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

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 final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the department will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

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 descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23. 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 in or eligible for listing in 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 areas down to and including the first aquifer which may be affected below the lowest coal seam to be mined.

(2) (a) Test borings or core samples 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 pyritic 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 a statement of the results of test borings or core samplings 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 statement is unnecessary because other equivalent information is accessible to the department in a satisfactory form.

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 ground 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 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. These data shall include, but not be limited to, the parameters listed in this paragraph. The department may add or delete parameters as appropriate to ensure collection of information which the department determines is relevant except that total dissolved solids (or specific conductance) and total suspended solids shall be required in every case.

1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standard units;
6. Total and dissolved iron in milligrams per liter;
7. Total and dissolved manganese in milligrams per liter; and
8. Sulfate in miligrams per liter.

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. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

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 (1) 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 a 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 or eligible for listing 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 pro-

posed 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, and 405 KAR 8:010E, Section 5(6).

(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 loading 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 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; 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; 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 KAR 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, 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. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

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 assessment 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 the 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 groundwater systems, both within the proposed permit area and adjacent areas, from the adverse effects of the proposed surface mining activities;

(b) The rights of present users of surface and groundwater; and

(c) The quantity of surface and groundwater 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 16 of this regulation 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 groundwater 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 groundwater 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 groundwater 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 constructed 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 em-

bankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) 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 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 405 KAR 16:100E.

(b) Each plan shall, at a minimum, 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 or 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 groundwater 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 subsections (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. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

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 pre-mining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 16:210E;

(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; and

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 during the five (5) years preceding the application, 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 all MSHA identification numbers that have been assigned for the mine and all sections.

(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.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

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 final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the department will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

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 cer-

tificate 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 a description of the existing, premining environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23. 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 in or eligible for listing in 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 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 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 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 is unnecessary because other equivalent information is accessible to the department in a satisfactory form.

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 ground 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 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 areas affected by surface operations and facilities and adjacent areas. The description shall also include the location of all surface water bodies such as streams, lakes, ponds, and springs, within the proposed permit area and adjacent area.

(2) Surface water information for areas affected by surface operations and facilities and adjacent areas 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. These data shall include, but not be limited to, the parameters listed in this paragraph. The department may add or delete parameters as appropriate to ensure collection of information which the department determines is relevant, except that, total dissolved solids (or specific conductance) and total suspended solids shall be required in every case.

1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standards units;
6. Total and dissolved iron in milligrams per liter;
7. Total and dissolved manganese in milligrams per liter; and
8. Sulfate in milligrams per liter.

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(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 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. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

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 (1) 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 (1) 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 con-

tains 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 or eligible for listing 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, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(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, 31, 32, 33, 34, 38 and 405 KAR 8:010E, Section 5(6).

(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, maps and drawings 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 KAR 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 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. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

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 area and adjacent areas and whether subsidence, if it occurred 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 (1) 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. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3);
(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;
(e) Include any geotechnical investigation, design, and construction requirements for the structure;
(f) Describe the operation and maintenance requirements for each structure; and
(g) 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 and 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. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

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 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 18:220E;
(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;
(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.
(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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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.

(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 non-mined 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 Chapter 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 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 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, Chapter 10 have been complied with; and

(i) The permit for the surface mining activities contains 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 complied 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 subparagraph 2 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. Date of Applicability. The provisions of this

regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 various bonding methods.

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) An applicant shall not disturb surface acreage or extend any underground shafts, tunnels, or operations prior to receipt of approval from the department of a performance bond covering areas to be affected by surface operations and facilities.

(2) After an application for a new, amended, 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 as a penal sum. The performance bond shall 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, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of Title 405, Chapters 7 through 24 have been met. The amount, duration, type, conditions and terms of the performance bond shall conform to 405 KAR 10:020E and 405 KAR 10:030E.

(3) No permit shall be revised or amended to include additional area unless the liability of the current bond(s) is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond(s) covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond(s), the additional area must be permitted as a separate increment of the current permit area or under a new permit.

(4) Where more than one (1) bond is filed for a permit area or increment, the bonds must be accompanied by a schedule, agreed to by all parties, which sets forth the agreed distribution of bond amounts released under 405 KAR 10:040E, and bond amount reductions under 405 KAR 10:020E, Section 4, or which authorizes the department to determine such distribution.

Section 3. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the department prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S"—Single area bonding. A single area bond is a bond which covers the entire permit area as a single undivided area, for which the applicant must file the entire bond amount required by the department prior to issuance of the permit. Liability under the bond shall extend to every part of the permit area at all times. There shall be no release of all or part of the bond amount for completion of a particular phase of reclamation on any part of the permit area under 405 KAR 10:040E until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "C"—Cumulative bonding. A cumulative bond is a bond which covers the entire permit area at all times, which may be filed by the permittee in partial bond amounts as operations progress through the permit area, with credit for successful reclamation on previously reclaimed sections of the permit area.

(a) For purposes of filing partial bond amounts, but not for purposes of bond release or bond forfeiture, the permit area shall be divided into sectional areas which shall be subject to approval by the department. These sections shall be clearly identified on maps submitted in the permit application under Title 405, Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each section.

(b) Prior to issuance of the permit, the applicant shall file the partial bond amount which the department determines is necessary for the first section of the permit area. The partial bond amount filed for the initial section shall not be less than the minimum bond required for the permit area under 405 KAR 10:020E, Section 2.

(c) The permittee shall not engage in any surface coal mining and reclamation operations on any section of the permit area unless and until the partial bond amount determined by the department for that section has been filed with the department. The permittee shall file with the department the partial bond amount required for any section at least thirty (30) days prior to beginning operations in that section. In determining the partial bond amount required to be filed for any section of the permit area, the department may allow credit for reclamation successfully completed on previously reclaimed sections of the permit area according to 405 KAR 10:040E.

(d) The boundaries of sections for which the required partial bond amounts have been filed shall be physically

marked at the site in a manner approved by the department.

(e) Although the bond amount is filed with the department in partial amounts as additional sections of the permit area are affected, liability under the bond extends at all times to the entire permit area, and the entire accumulated bond amount is applicable to the entire permit area. There shall be no release of bond for completion of a particular phase of reclamation on any part of the permit area until that phase of reclamation has been successfully completed on the entire permit area.

(3) Method "I"—Incremental bonding. Incremental bonding is a method of bonding in which the permit area is divided into individual increments, each of which is bonded separately and independently, and for which bond is filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments which shall be subject to approval by the department. Where the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area must be contained within a single increment. These increments shall be clearly identified on maps submitted in the permit application under Title 405, Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the department the full bond amount required by the department for the first increment of the permit area, which shall be not less than the minimum bond required for the permit area required under 405 KAR 10:020E, Section 2.

(c) The permittee shall not engage in any surface coal mining and reclamation operations on any increment of the permit area unless and until the full bond amount required by the department has been filed for that increment. The full bond amount required for any increment shall be filed with the department at least thirty (30) days prior to beginning operations in that increment. No credit shall be given for reclamation on other increments.

(d) The boundaries of each increment for which bond has been filed shall be physically marked at the site in a manner approved by the department.

(e) The bond amount for an increment shall be released or forfeited independently of any other increment of the permit area, and liability under the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) There shall be no release of bond for completion of a phase of reclamation on any part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) When the bond for an increment is completely released under 405 KAR 10:040E, the increment shall be deleted from the permit area.

Section 4. 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 5. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to adopt 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;

(4) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(5) Such other cost information as may be required by or available to the department.

Section 2. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be $10,000 for the entire area under one (1) permit.

Section 3. Period of Liability. (1) Liability under performance bond(s) applicable to an entire permit area or increment thereof 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 or increment 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. Such separation shall not change the period of liability for the remainder of the original bonded area. 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, augmented seeding, fertilization, irrigation or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions which the permittee is required 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.

Section 4. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the department as the acreage in the permit area or increment is increased, 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) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the department upon application by the permittee under 405 KAR 8:010E, Section 20 to delete acreage from the permit area or increment thereof where such acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040E, Section 2(3) shall apply. However, a reduction due to such deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040E, Section 1.

(3) 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.

(4) The department may refuse to approve any reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, or if there is a pending action for forfeiture of the bond.

Section 5. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 10:030E. Types, 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, 350.060, 350.064, 350.151, 350.465
EFFECTIVE: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to specify types, terms, and conditions for performance bonds and liability insurance. This regulation sets forth the various types 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 types of 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. Types of Performance Bond. (1) The department shall approve performance bonds of only those types which are set forth in this section.

(2) The performance bond shall be either:

(a) A surety bond;

(b) A collateral bond; or

(c) A combination of these bonding types.

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 as a penal sum.

(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 3(3).

(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 affected may be cancelled with the written approval of the department; provided, the surety gives written notice to both the permittee and the department of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the department. The department may approve such cancellation only if a replacement bond has been filed by the permittee, or the permit has been revised 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 bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c) 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 incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without bond coverage in violation of 405 KAR 10:010E, Section 2(1). The department shall issue a notice of noncompliance against any permittee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the department shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090E and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.

(6) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The department or its authorized agent 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 or its authorized agent 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 the 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 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.

(c) The letter must be payable to the department upon demand and receipt from the department of a notice of forfeiture issued in accordance with 405 KAR 10:050E, or in the event the bank wishes to terminate the letter on its expiration date, the department may draw upon demand.

(d) 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(1). The department shall issue a notice of noncompliance against any permittee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the department shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of

violation'' under 405 KAR 7:090E and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order of cessation and immediate compliance shall be issued.

Section 3. Substitution of Bonds. (1) The department may allow permittees to substitute existing surety or collateral bonds for other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment 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.

(3) The department may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 4. Terms and Conditions for Liability Insurance. (1) The applicant shall 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 damaged 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.

(4) Upon the incapacity of an insurer by reason of bankruptcy, insolvency or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without insurance coverage in violation of this section. The department shall issue a notice of noncompliance against any permittee who is without insurance coverage. The notice shall specify a reasonable period to replace such coverage, not to exceed ninety (90) days. During this period, the department shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a ''pattern of violation'' under 405 KAR 7:090E and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.

Section 5. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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 or credit 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 liability under performance bonds, and for crediting of bond amounts in cumulative bonding. This regulation also sets forth certain notice and hearing requirements pertinent to bond release.

Section 1. Procedures for Release or Credit of Performance Bond. (1) Application for bond release. The permittee or any person authorized to act on his or her behalf, may file an application with the department for release of all or part of the performance bond liability applicable to a particular permit or increment after all reclamation, restoration and abatement work in a reclamation phase as defined in Section 2(4) has been completed on the entire permit area or increment. The procedures of this section also apply to requests made pursuant to 405 KAR 10:020E, Section 4.

(a) Bond release applications may only be filed at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed.

(b) The application for bond release shall include copies of notices sent to adjoining property owners, surface owners, their agents and lessees, 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). The notices shall also state that these individuals and their representatives may participate in the bond release inspection by contacting the department. These notices shall be sent before the permittee files the application for release.

(c) Within thirty (30) days after filing the application for bond release the permittee shall submit proof of publica-

tion of the advertisement required by subsection (2) of this section. Such proof of publication shall be considered part of the bond release application and the application shall not be considered complete until such proof of publication is submitted to the department.

(2) Public notice. At the time of filing an application for bond release 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 or counties 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 or increment;

(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 or increment 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) Objections. Written objections to the proposed bond release and requests for a public hearing may be filed with the department by any person having a valid legal interest which might be adversely affected by release of the bond, and by the responsible officer or head of any federal, state, or local government agency. Objections must be filed within thirty (30) days following the last advertisement of the filing of the application.

(4) Inspection and evaluation. 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.

(5) (a) Notice of decision. The department shall as described in paragraph (b) provide notification 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) 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, all interested parties, and by certified mail the County Judge-Executive, of their right to request, within thirty (30) days of notice, a public hearing.

(6) Hearing. In the event that a public hearing has been requested pursuant to subsections (3) or (5)(b), 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 within sixty (60) days of the department's decision, in the locality of the permit area, or the central office of the department in Frankfort, Kentucky, at the option of the objector.

(7) Procedures for bond credit in cumulative bonding.

(a) Application. The permittee or any person authorized to act on his or her behalf may file an application with the department to receive bond credit for completion of all reclamation, restoration, and abatement work in a reclamation phase on a sectional area approved under 405 KAR 10:010E, Section 3(2) for cumulative bonding. Bond credit applications may only be filed at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed. The application shall be of such form and content as the department may require and shall include, but not be limited to:

1. The name of the permittee, the permit number, and the date of issuance or renewal of the permit;

2. The location, identification, and acreage of the section(s) for which the credit is sought and the section(s) to which the credit is requested to be applied;

3. The total bond amount in effect for the entire permit area and the bond amounts originally calculated for the section(s) identified under subparagraph 2 of this paragraph, and any credits previously given for such section(s); and

4. A description of the reclamation, restoration, and abatement work completed on the section(s) for which credit is sought.

(b) Inspection and evaluation. The department shall inspect and evaluate the reclamation work on the section(s) involved within thirty (30) days after receiving a completed application for bond credit, or as soon thereafter as weather conditions permit.

(c) Notice of decision. The department shall, within thirty (30) days after its inspection and evaluation, notify the permittee of its decision to grant or deny the requested bond credit. The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the bond credit, and notify the permittee of his or her right to request, within thirty (30) days of notice, a public hearing.

(d) Hearing. In the event that a public hearing has been requested pursuant to paragraph (c) of this subsection, the department shall inform the permittee 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 within sixty (60) days of the department's decision, in the locality of the permit area, or the central office of the department in Frankfort, Kentucky, at the option of the permittee.

Section 2. Criteria and Schedule for Release or Credit of Performance Bond. (1) Liability under performance bonds shall not be eligible for release or credit until the permittee has met the requirements of the applicable reclamation phase as defined in subsection (4) of this section. The department may release portions of the liability under performance bonds applicable to a permit or increment following completion of reclamation phases on the entire permit area or entire increment, or may allow bond credit for completion of reclamation phases on sections 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 or credited shall be calculated on the following basis:

(a) Release or credit an amount not to exceed sixty (60) percent of the total original bond amount on the permit area, section, or increment upon completion of phase I reclamation.

(b) Release or credit an additional amount not to exceed twenty-five (25) percent of the total original bond on the permit area, section, or increment upon completion of phase II reclamation, but in all cases the amount remaining shall be sufficient to reestablish vegetation and reconstruct any drainage structures.

(c) For single area and incremental bonding, release the remaining portion of the total performance bond on an entire permit area or increment after standards of phase III reclamation have been attained on the entire permit area or increment and final inspection and procedures of Section 1 have been satisfied. After the final bond release for phase III reclamation on an increment, the increment shall be deleted from the permit area.

(d) For cumulative bonding, a minimum amount of $500 or fifteen (15) percent of the total performance bond for the entire permit area, whichever is greater, shall be retained until the entire permit area, including all sections, has achieved the standards of phase III reclamation and final inspection and procedures of Section 1 have been satisfied.

(3) 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.

(4) Reclamation phases are defined as follows:

(a) Reclamation phase I shall be deemed to have been completed on the entire permit area or increment 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;

(b) Reclamation phase II shall be deemed to have been completed on the entire permit area or increment 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 or increment in excess of the requirements of KRS 350.420, Title 405, Chapters 16 or 18, or the permit;

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 on the entire permit area or increment 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 has achieved compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit; and the applicable liability period under 405 KAR 10:020E, Section 3(2) has expired.

Section 14. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 effected. This regulation also specifies a method to determine the amount of bond forfeiture.

Section 1. General. (1) The department shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this regulation.

(2) The department may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.
(3) The department may withhold forfeiture and 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 to the surety on the bond, if applicable, of the department's determination to initiate forfeiture of the bond and the reasons for the forfeiture;
(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, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the department's action for other appropriate remedies against the permittee pursuant to 405 KAR 7:090E.
(3) The department shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. Such funds shall be deposited in an appropriate account for the payment of such costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the department finds that:
(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;
(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, and the department has determined that it is necessary, in order to fulfill the requirements of the permit, Title 405, Chapters 7 through 24 and KRS Chapter 350, to have someone other than the permittee correct or complete reclamation;
(c) The permit for the area or increment 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 the reclamation work and is, in the opinion of the department, diligently and satisfactorily performing such work; or
(d) The permittee or surety has failed to comply with a compliance schedule approved pursuant to Section 1(2).
(2) A bond may be forfeited if the department finds that:
(a) 1. 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; or
2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and
(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit.

Section 4. Forfeiture Amount. The department shall forfeit the entire amount of the bond for the permit area or increment.

Section 5. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 complete preservation 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 KRS Chapter 350 and this Title, including but not limited to the purpose of making inspections.

(2) Presentation of credentials. Authorized representatives of the department shall present credentials for identification purposes upon request by a representative of the permittee on the permit area.

(3) Prior notice. The department shall have no obligation to give prior notice that an inspection will be conducted.

(4) 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.

(5) Frequency of inspections.

(a) Partial inspections. A partial inspection is an onsite review of a permittee's compliance with some of the permit conditions and requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24. 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 at least until phase I reclamation, as defined in 405 KAR 10:040E, has been completed on the entire permit area. The department shall continue such partial inspections until the department determines that the permit area is sufficiently stable with respect to mass stability, erosion, revegetation, water quality and other reclamation requirements so that the quarterly complete inspections required under paragraph (b) of this subsection will provide adequate inspection of the permit area.

(b) Complete inspections. A complete inspection is an onsite review of a permittee's compliance with all permit conditions and requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, within the entire area disturbed or affected by surface coal mining and reclamation operations. 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.

(c) The department shall conduct periodic inspections of all coal exploration operations.

Section 4. Record of Inspections. (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 and shall be available for public inspection at the appropriate regional office of the bureau in accordance with the Kentucky Open Record Laws, KRS 61.870 through KRS 61.884.

(2) Upon inspection of surface coal mining and reclamation operations, authorized representatives of the department shall collect evidence of every observed violation of a permit condition or requirement of KRS Chapter 350 or regulations promulgated pursuant thereto.

(3) The department shall preserve collected evidence, where appropriate, in order that such evidence may be presented at hearings held 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 pursuant to 405 KAR 7:090E. 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 notices and orders to be issued by authorized representatives of the department. The regulation directs that there be issued a notice of noncompliance and order for remedial measures. The regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent

harm. The regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate such orders or notices. The 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 may from time to time or for a definite period designate by written order, or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the regulations contained in 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, 3, and 4 of this regulation.

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 or she finds a violation of KRS Chapter 350, Title 405, Chapters 7 through 24, 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 5.

(4) Extension. An authorized representative of the secretary may by written notice 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.

(a) 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, except upon a showing by the permittee that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement date beyond ninety (90) days pursuant to this subsection shall not be granted when the permittee's failure to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(b) Circumstances which may qualify a surface coal mining operation for an abatement period of more than ninety (90) days are:

1. Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within ninety (90) days after a valid permit expires or is required, for reasons not within the control of the permittee;

2. Where there is a valid judicial order precluding abatement within ninety (90) days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

3. Where the permittee cannot abate within ninety (90) days due to a labor strike;

4. Where weather conditions preclude abatement within ninety (90) days, or where, due to weather conditions, abatement within ninety (90) days clearly would cause more environmental harm than it would prevent; or requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) Whenever an abatement time in excess of ninety (90) days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the permittee may request the authorized representative to grant an abatement period exceeding ninety (90) days. The authorized representative shall not grant such an abatement period without the concurrence of the Director of the Division of Operations and Enforcement or his or her designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and full document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(e) Any determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:090E.

(f) No extension granted under this subsection may exceed ninety (90) days in length. Where the condition or circumstance which prevented abatement within ninety (90) days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the secretary may by written notice modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the secretary shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures was issued that such notice is terminated, when the authorized representative determines that a violation listed therein has been corrected. Such termination 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.

(7) Vacation. Upon the written recommendation of the regional administrator and the authorized representative of the secretary who issued the notice of noncompliance and order for remedial measures, the director of the division of operations and enforcement may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If a person issued a notice of noncompliance and order for remedial measures fails to comply with the terms of such notice within the time for remedial action established therein, or as subsequently extended, an authorized representative of the secretary shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the secretary shall immediately issue an order for cessation and immediate compliance if he or she finds, on the basis of an inspection, any condition or practice; or any violation of KRS Chapter 350, Title 405, Chapters 7 through 24; or any violation of a condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or
2. Is causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;
2. A reasonable description of the portion of the operation in which it applies;
3. The remedial measures necessary, if any, to abate the violation in the most expeditious manner possible; and
4. The time established for abatement, if appropriate, including the time for meeting any interim steps.

(b) At the same time that the authorized representative of the secretary issues an order for cessation and immediate compliance under subsection (1)(b) of this section, he or she shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner set forth in Section 5 of this regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the secretary deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice or violation has been abated; or until the order is modified or terminated in writing by an authorized representative of the secretary; or until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:090E.

(c) 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.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the secretary may by written notice modify or terminate an order for cessation and immediate compliance 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 for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he or she 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, or to impose any other applicable sanctions as authorized by law.

(c) Upon the written recommendation of the regional administrator and the authorized representative of the secretary who issued the order for cessation and immediate compliance, the director of the division of operations and enforcement may vacate an order for cessation and immediate compliance determined to have been issued in error.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the secretary issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he or she shall reinspect the permit area on or soon after the date given in the notice or order for completion of remedial measures. At the time of reinspection, the authorized representative shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed; following such a determination the department shall issue an order for cessation and immediate compliance or an order to show cause why the permittee's permit should not be suspended or revoked and bond forfeited.

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner set forth in Section 5.

Section 5. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be served on the person to whom it is issued or the person's designated agent promptly after issuance.

(2) Such notices and orders shall be served by hand or by certified mail, return receipt requested, or by registered mail to the person to whom the notice or order is issued. The notice shall also be served by hand 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 designated agent for service or 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.

(3) 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.

(4) The department may furnish copies to any person having an interest which is or may be adversely affected, in the coal exploration, surface coal mining and reclamation operation, or the permit area.

Section 6. Expiration. When a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal, expressly or by implication, such notice or order shall expire thirty (30) days after it is served unless a hearing pursuant to 405 KAR 7:090E is held at or near the mine site within that time; except that such notices and orders shall not expire if the condition, practice, or violation in question has been abated or if the preliminary hearing has been waived. 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.

Section 7. Suspension or Revocation of Permits and Exploration Approvals. The department may issue an order to a permittee requiring that permittee to show cause why his or her permit or coal exploration approval should not be suspended or revoked pursuant to 405 KAR 7:090E.

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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 and review by the department of inspection and enforcement decisions.

Section 1. Citizen Requests for Inspection. (1) Any citizen 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.

(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 administrative review by 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 Review of Adequacy and Completeness of Inspections. (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 notify the Commissioner of the Bureau of Surface Mining Reclamation and Enforcement in writing of any alleged failure on the part of the department to make adequate and complete or periodic inspections. The notification shall include sufficient information to create a reasonable belief that such failure exists and to demonstrate that the person has an interest which is or may be adversely affected.

(2) The commissioner shall, within fifteen (15) days of receipt of the notification, determine whether the department's inspections have been adequate, complete and periodic, as provided in this chapter, and if not, shall immediately order an inspection. The commissioner shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the failure.

Section 4. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981

EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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, Chapters 7 through 24. 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 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 permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanent-

ly 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 405 KAR 16:070E, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 16:110E, and the obligation to comply with all applicable conditions of the permit 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 area 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 under KRS Chapter 350.
(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 as 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) Prevent unauthorized entry to the immediate vicinity of charged holes by guarding or by conspicuous posting or flagging of the immediate vicinity.
(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. Date of Applicability. The provisions of this

regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:040E. Casing and sealing of drilled holes.

RELATES TO: KRS 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 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 borehole 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 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 effect, 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 coal mining operations, 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. Such materials shall be tested for their chemical and physical properties, including but not limited to: determination of compaction and erodibility potential, pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the department. 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 compaction and erodibility potential, 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 water 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 groundwater, 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; and
8. Selectively placing waste materials in bankfill areas.

(c) If the practices listed in 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 requirements of 405 KAR 16:070E, Section 1(1)(g); 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 16:200E, 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 16:190E, Section 1;

(c) Retaining sediment within disturbed areas;

(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 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; and

(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;

(e) Inert materials used for stabilizing underground mines; or

(f) Underground mine development wastes.

(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 disturbance 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 of the stream shall not be adversely affected by the surface mining activities as determined by state and federal water quality standards.

(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 meets the requirements of 405 KAR 16:070E, Section 1(1)(g).

(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. Date of Applicability. The provisions of this

regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 identifies 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.
(b) Sedimentation ponds and other treatment facilities shall be properly maintained and shall not be removed until all disturbed areas in the drainage area above the facility have been backfilled, graded and revegetated in accordance with this chapter and:
1. The vegetation has successfully survived two (2) growing seasons;
2. The vegetation meets the ground cover standards of 405 KAR 16:200E; and
3. The permittee has demonstrated to the satisfaction of the department that retention of the pond or other treatment facility is not necessary in order to meet the requirements of paragraph (g) of this subsection.
(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 requirements of paragraph (g) of this subsection.
(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 requirements of 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 applicable federal and state water quality standards including the effluent limitations guidelines for coal mining promulgated by the U.S. EPA in 40 CFR 434.
(2) 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 ground water 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 for 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. 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 pass safely 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 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 were 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, as measured at the crest of the principal spillway, of 0.125 acre-feet for each acre of disturbed area within the upstream drainage area, or such larger volume as necessary to achieve compliance with the requirements of 405 KAR 16:070E, Section 1(1)(g).

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond shall meet the requirements of 405 KAR 16:070E, Section 1(1)(g).

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 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 405 KAR 16:070E, Section 1(1)(g).
(3) There shall be no outflow through an 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.
(5) An appropriate combination of principal and emergency spillways shall be provided to safely discharge 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 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the department. The department may establish size and other criteria under which a pond design may be approved which provides for a principal spillway, but no emergency spillway.
(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 requirement 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 discharge safely 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 and certified 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 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 or exceeding the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the department, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion and other hazardous conditions and reports of the inspection shall be submitted to 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 and 405 KAR 16:100E, Section 10.

(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 5 and with 401 KAR 4:030.

Section 6. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:100E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 or exceeding the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected in accordance with 30 CFR 77.216-3 by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections.

(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 as having been constructed in accordance with the design approved by the department and annually thereafter as having been 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 immediately after construction, but need not be certified annually thereafter. 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Groundwater. (1) Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the department, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the permit area and adjacent areas.

(2) When surface mining activities may affect the groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, groundwater levels and groundwater 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 groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance 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 and reporting 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) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 16:070E, Section 1(1)(g);

(c) 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 notification to the department; and

(d) Result in quarterly reports to the department, to include analytical results from each sample taken during the quarter. 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 compliance with applicable water quality standards and 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 pre-blasting survey of the dwelling or structure. If a structure is renovated or added to, subsequent to a pre-blast 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 pre-blasting 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 pre-blasting 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 to the department. If the person requesting the survey disagrees with the results of the survey, he or she may 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 pre-blasting 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 pre-blast survey, the notice of change need not include information regarding pre-blast 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 reasons for the delay in blasting including why the blast 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 be reasonably 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 and 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 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 pre-blasting survey, seismic investigations, or other appropriate investigations, and based upon the provisions of 405 KAR 24:040E, 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 boundary of the permit area 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 one (1) inch 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 one (1) inch-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 one (1) inch per second is not exceeded, the equation in Appendix B of this regulation need not be used. If that equation is not used, a seismograph 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 one (1) inch 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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

$$W = (D/60)^2$$

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	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 groundwaters or exceed the requirements of 405 KAR 16:070E; and

(b) Stability of the fill.

(2) The fill shall be designed and 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.

(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 16:210E, except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the department to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department consistent with 405 KAR 16:190E, Section 2(3) except that the safety factor shall be 1.5 and the twenty (20) feet maximum terrace width shall not apply.

(9) Where the toe of the spoil rests on a downslope or other area, where the natural land slope 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. 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 keyway cuts.

(10) The fill shall be inspected for stability by a qualified 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 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 certify to the department 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) If approved by the department, excess spoil and underground development waste may be disposed of in coal processing waste banks in accordance with 405 KAR 16:140E or 405 KAR 18:140E. However, coal processing waste shall not be disposed of in head-of-hollow or valley fills designed and approved for excess spoil or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing 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 water-courses, 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, including any necessary laboratory testing of foundation materials, shall be performed in order to determine the 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 safety factor 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. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the department that the alternative materials will provide adequate long-term capacity for drainage at the site.

(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 controlled 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 a 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 passing safely 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 and of the requirement in Section 1(6) to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, 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 all other requirements of Section 1, including the factor of safety, 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 a 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 in natural ground 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 postmining 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. (1) When approved by the department, excess spoil may be disposed of on existing benches created by surface coal mining operations conducted prior to May 3, 1978.

(a) The applicant shall demonstrate to the satisfaction of

the department that the spoil to be placed on the existing benches is in excess of the spoil necessary to eliminate the highwall and return to approximate original contour on the active mining bench.

(b) All areas to be affected shall be included in the permit area.

(c) The excess spoil shall be placed only on solid portions of the existing bench, and shall be placed in a controlled manner to eliminate as much of the existing highwall as practicable.

(d) The excess spoil shall be placed in horizontal lifts, concurrently compacted as necessary to ensure mass stability and prevent mass movement with a long-term static safety factor of 1.3, and graded to allow surface and subsurface drainage compatible with the natural surroundings. The final graded slopes shall not exceed 1v:2h (fifty (50) percent); except that the department may approve steeper slopes which provide a minimum safety factor of 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.

(2) Gravity transport of spoil.

(a) When approved by the department, excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench, if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 16:010E.

(b) The gravity transport points shall be determined by the applicant on a site specific basis and approved by the department to minimize hazards to health and safety and to ensure that damage will be minimized if the spoil should accidentally move off the existing bench to the downslope.

(c) All excess spoil placed on the lower bench by gravity transport, including the spoil immediately below the points of gravity transport, shall be rehandled and placed as required under subsection (1) of this section. Spoil remaining on the lower bench from prior operations need not be rehandled except when necessary to ensure stability of the fill.

(d) A safety berm shall be constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil to the lower bench. The safety berm shall be of sufficient height, width, and length to prevent the gravity transported spoil from moving off the lower bench to the downslope. Where there is insufficient material from previous operations remaining on the lower bench to construct the safety berm, only that amount of excess spoil necessary for construction of the safety berm may be gravity transported to the lower bench prior to construction of the safety berm. The safety berm shall be removed during final grading operations.

Section 6. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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 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 16:130E

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 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 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, 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 inspection 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 of this regulation, 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 extent that the requirements of those sections are varied in this section.

(2) Coal processing waste banks shall have a minimum static safety factor 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, other materials, 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 method 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 prepared by a qualified registered professional engineer.

Section 7. Return to Underground Workings. Coal pro-

cessing 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 16:160E. Coal processing waste dams and impoundments.

RELATES TO: KRS 350.425
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, that were completed or are to be completed after August 3, 1977.

(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 discharge 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, including the certification requirements thereof, 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 cement 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 that application of fugitive dust control measures listed in Section 2 of this regulation 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;

(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 for 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, unless such greenbelts are inconsistent with the approved postmining land use.

Section 2. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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.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.

Section 2. General Grading Requirements. (1) 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, and to ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land.

(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) Cut-and-fill terraces may be used only in those situations expressly identified in subsection (3) of this section.

(2) 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 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 adversely physically impacted. 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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 noncombustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, or 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 uses.

(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 groundwater 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 groundwaters and wherever necessary to ensure the stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the department before acid-forming or 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 of this regulation 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 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, 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 of this regulation 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of self-regeneration and plant succession. 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. If the postmining land use is cropland, successful establishment of the crops normally grown or other appropriate crops will meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion. If the postmining land use is cropland, establishment of appropriate crops and normal husbandry practices will meet the requirements of this paragraph unless the department determines that other temporary vegetation shall be initially planted in order to stablize the soil surface prior to the establishment of crops.

(c) Subject to the approval of the department, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards where no adverse environmental impact will occur if the exemption is granted.

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, are desirable and necessary to achieve 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)(e) 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 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 of this regulation 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 that 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) of this regulation, 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 and the Director of OSM 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 and the Director of OSM. 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 suc-

cessful 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 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 required 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 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, success of 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 of this regulation. 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 by the department to be adequate to control erosion. 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 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 the 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) of this regulation 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 of this regulation 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) When 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 of this regulation. 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 that 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 and certified by a qualified registered professional engineer to assure land stability, drainage, and site configuration necessary 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.

(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. Land Use Categories. The following is the list of land use categories to be applied under this regulation. These uses are defined in 405 KAR 7:020E. Also see the definition of "land use."

(1) Cropland.
(2) Pastureland.
(3) Grazing land.
(4) Forestry.
(5) Residential.
(6) Industrial/commercial.
(7) Recreation.
(8) Fish and wildlife habitat.
(9) Developed water resources.
(10) Undeveloped land or no current land use or land management.

Section 6. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, 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 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 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 grade shall not exceed lv:6.5h (fifteen (15) percent).

(b) There shall be not more than 300 feet of 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 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, 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 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, 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, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed, 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:010E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, Chapters 7 through 24. 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 appropriate 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 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 permanent 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 405 KAR 18:070E, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 18:110E, and the obligation to comply with all applicable conditions of the permit 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:030E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 each point of access to the permit area from public roads.

(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 under KRS Chapter 350.

(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) Prevent unauthorized entry to the immediate vicinity of charged holes by guarding or by conspicuous posting or flagging of the immediate vicinity.

(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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:040E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 of this regulation 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:050E. Topsoil.

RELATES TO: KRS 350.151, 350.405, 350.415, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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.

(3) For surface areas which are without suitable topsoil as a result of previous surface coal mining operations, 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. Such materials shall be tested for their chemical and physical properties, including but not limited to: determinations of compaction and erodibility potential, pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the department. 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 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 compaction and erodibility potential, 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:060E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 or control 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 requirements of 405 KAR 18:070E, Section 1(1)(g); 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;
(c) Retaining sediment within disturbed areas;
(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 quality 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 date of applicability 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 of the stream shall not be adversely affected by the underground mining activities as determined by federal and state water quality standards.

(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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:070E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 identifies 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, shall be treated by passing through sedimentation ponds or other approved treatment facilities before leaving the permit area. The department may grant exemptions from the requirement for sedimentation ponds or treatment facilities where the drainage is demonstrated by the permittee to meet the requirements of paragraph (g) of this subsection, and:

1. The drainage is from underground workings; or
2. The drainage is from surface areas which are adequately stabilized by vegetation or other protection against erosion so as to prevent the formation of rills and gullies; or
3. The disturbed surface drainage area is small; or
4. The drainage is a mixture of surface drainage meeting subparagraphs 2 or 3 above and drainage from underground workings, and each type of drainage is demonstrated by the applicant to meet the requirements of paragraph (g) of this subsection prior to being mixed.

(b) Sedimentation ponds and other treatment facilities for surface drainage from disturbed areas shall be properly maintained and shall not be removed until all disturbed areas in the drainage area above the facility have been backfilled, graded and revegetated in accordance with this chapter and:

1. The vegetation has successfully survived two (2) growing seasons;
2. The vegetation meets the ground cover standards of 405 KAR 16:200E; and
3. The permittee has demonstrated to the satisfaction of the department that retention of the pond or other treatment facility is not necessary in order to meet the requirements of paragraph (g) of this subsection.

(c) Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the requirements of paragraph (g) of this subsection 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 requirements of 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 applicable federal and state water quality standards including the effluent limitations guidelines of coal mining promulgated by the U.S. EPA in 40 CFR 434.

(2) 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:080E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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, as measured at the crest of the principal spillway, of 0.125 acre-feet for each acre of disturbed area within the upstream drainage area, or such larger volume as necessary to achieve compliance with the requirements of 405 KAR 16:070E, Section 1(1)(g).

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond shall meet the requirements of 405 KAR 18:070E, Section 1(1)(g).

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 405 KAR 18:070E, Section 1(1)(g).

(3) There shall be no outflow through an 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. The design shall take into account the volume of water and sediment contributed by the underground mine discharge.

(4) Sediment shall be removed from sedimentation ponds when the designed sediment storage volume has filled with sediment.

(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 the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the department. The department may establish size and other criteria under which a pond design may be approved which provides for a principal spillway but no emergency spillway.

(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 and certified 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 or exceeding the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the department, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion, and other hazardous conditions and reports of the inspection shall be submitted to 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 5 and with 401 KAR 4:030.

Section 6. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 or exceeding the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected in accordance with 30 CFR 77.216-3 by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections.
(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 as having been constructed in accordance with the design approved by the department and annually thereafter as having been 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 immediately after construction, but need not be certified annually thereafter. 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 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 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 and reporting 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) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 18:070E, Section 1(1)(g);

(c) 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 notification to the department; and

(d) Result in quarterly reports to the department, to include analytical results from each sample taken during the quarter. 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 compliance with applicable water quality standards and 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
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RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 to the department. If the person requesting the survey disagrees with the results of the survey, he or she may 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, and based on the provisions of 405 KAR 24:040E, 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 boundary of the permit area, 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 one (1) inch 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 one (1) inch-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 one (1) inch 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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

$$W = (D/60)^2$$

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	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 requirements of 405 KAR 18:070E; and
(b) Stability of the fill.
(2) The fill shall be designed and 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.

(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 18:220E; except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the department to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department consistent with 405 KAR 16:190E, Section 2(3) except that the safety factor shall be 1.5 and the twenty (20) feet maximum terrace width shall not apply.

(9) Where the toe of the spoil rests on a downslope or other area, where the natural land slope 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. 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 qualified 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 certify to the department 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) If approved by the department, excess spoil and underground development waste may be disposed of in coal processing waste banks in accordance with 405 KAR 16:140E or 405 KAR 18:140E. However, coal processing waste shall not be disposed of in valley or head-of-hollow fills designed and approved for excess spoil or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing 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 investigation, including any necessary laboratory testing of foundation materials, shall be performed in order to determine the 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) Underdrains 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. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the department that the alternative materials will provide adequate long-term capacity for drainage at the site.

(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 controlled 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. 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 Section 2 and of the requirement in Section 1(6) to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, 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 all other requirements of Section 1, including the factor of safety, 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 in natural ground 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 re-

quired 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. (1) When approved by the department, underground development waste and excess spoil may be disposed of on existing benches created by surface coal mining operations conducted prior to May 3, 1978.

(a) The applicant shall demonstrate to the satisfaction of the department that the underground development waste and excess spoil to be placed on the existing benches is in excess of the underground development waste and spoil necessary to eliminate the highwall and return to approximate original contour on the active mining bench.

(b) All areas to be affected shall be included in the permit area.

(c) The underground development waste and excess spoil shall be placed only on solid portions of the existing bench, and shall be placed in a controlled manner to eliminate as much of the existing highwall as practicable.

(d) The underground development waste and excess spoil shall be placed in horizontal lifts, concurrently compacted as necessary to ensure mass stability and prevent mass movement with a long-term static safety factor of 1.3, and graded to allow surface and subsurface drainage compatible with the natural surroundings. The final graded slopes shall not exceed 1v:2H (fifty (50) percent), except that the department may approve steeper slopes which provide a minimum safety factor of 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.

(2) Gravity transport of underground development waste and excess spoil.

(a) When approved by the department, underground development waste and excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 16:010E.

(b) The gravity transport points shall be determined by the applicant on a site specific basis and approved by the department to minimize hazards to health and safety and to ensure that damage will be minimized if the underground development waste and excess spoil should accidentally move off the existing bench to the downslope.

(c) All underground development waste and excess spoil placed on the lower bench by gravity transport, including the underground development waste and excess spoil immediately below the points of gravity transport, shall be rehandled and placed as required under subsection (1) of this section. Underground development waste and excess spoil remaining on the lower bench from prior operations need not be rehandled except when necessary to ensure stability of the fill.

(d) A safety berm shall be constructed on the solid portion of the lower bench prior to gravity transport of the underground development waste and excess spoil to the lower bench. The safety berm shall be of sufficient height, width, and length to prevent the gravity transported underground development waste and excess spoil from moving off the lower bench to the downslope. Where there is insufficient material from previous operations remaining on the lower bench to construct the safety berm, only that amount of underground development waste and excess spoil necessary for construction of the safety berm may be gravity transported to the lower bench prior to construction of the safety berm. The safety berm shall be removed during final grading operations.

Section 14. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 prepared 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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.

Section 2. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:160E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, that were completed or are to be completed after August 3, 1977.

(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 accordance 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, including the certification requirements thereof, 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:180E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;

(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 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; 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:190E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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) 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 ensure stability or to prevent leaching), and graded to eliminate all highwalls, spoil piles, and depressions and to ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize offsite effects, and to support the approved postmining land use.

(2) 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 as required by subsection (1) of this section 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.

(3) 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of self-regeneration and plant succession 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. If the postmining land use is cropland, successful establishment of the crops normally grown, or other appropriate crops, will meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stablizing the soil surface from erosion. If the postmining land use is cropland, establishment of appropriate crops and normal husbandry practices will meet the requirements of this paragraph unless the department determines that other temporary vegetation shall be initially planted in order to stabilize the soil surface prior to establishment of crops.

(c) Subject to the approval of the department, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards where no adverse environmental impact will occur if the exemption is granted.

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, are desirable and necessary to achieve 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 and the Director of OSM 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 and the Director of OSM. Ground cover 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 required 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 by the department to be adequate to control erosion. 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) Where land to be affected by surface operations and facilities is forty (40) acres or less in size within a permit area, 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 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 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 min-

ing 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 are designed and certified by a qualified registered professional engineer to assure land stability, drainage, and site configuration necessary 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. Land Use Categories. The following is the list of land use categories to be applied under this regulation. These uses are defined in 405 KAR 7:020E. Also see the definition of "land use."

(1) Cropland.
(2) Pastureland.
(3) Grazing land.
(4) Forestry.
(5) Residential.
(6) Industrial/commercial.
(7) Recreation.

(8) Fish and wildlife habitat.
(9) Developed water resources.
(10) Underdeveloped land or no current land use or land management.

Section 6. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 18:230E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, 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 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 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 grade shall not exceed lv:6.5h (fifteen (15) percent).
(b) There shall be not more than 300 feet of 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 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, 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 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 intersecting 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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, 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, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed, 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:010E. Coal exploration.

RELATES TO: KRS 350.057, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.057, 350.465
EFFECTIVE: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 8:020E, 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 8:020E, Section 2(2)(c)1 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:030E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Additional Performance Standards. (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 the requirements of 405 KAR 16:070E, Section 1(1)(g), 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 revegetation requirements of this section during reclamation. 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.

Section 6. Exemption. The department shall exempt from the requirements of this regulation those surface facilities at underground mines which are actively used over extended periods of time and are determined by the department to affect a minimal amount of land.

Section 7. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:050E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
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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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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, by reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw, or by increasing 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. 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) Land above the highwall may be disturbed only to the extent that the department deems appropriate and approves as necessary to facilitate compliance with the provisions of Title 405, Chapters 16 through 20, and provided that the department finds that the disturbance is necessary to:

(a) Blend the solid highwall and the backfilled material;
(b) Control surface runoff;
(c) Provide access to the area above the highwall; or
(d) Eliminate the highwall where sufficient backfill material is not otherwise available.

(5) 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.

(6) The operations are conducted in full compliance with a permit issued in accordance with 405 KAR 8:050E.

(7) 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:070E. 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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 8. 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.

(16) 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 operation of the coal processing plant or support facility.

Section 3. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 20:080E. In situ processing.

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
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 that 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, telephone number, and notarized signature.
(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 be specific as to the petitioned "area" as defined in 405 KAR 7:020E and 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. Be incompatible with existing land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the areas which would be affected by such surface coal mining and reclamation operations;
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, telephone number, and notarized signature.
(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 land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the designated area, 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 were in existence prior to January 4, 1977 in such surface coal mining operations.

(2) Determination of "substantial legal and financial commitments." 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.

(c) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantive monies on exploration, mapping, surveying, and geological work, as well as engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations.

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 petition. 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 com-

ment 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 purposes of this regulation, the close of the public comment period shall mean at the close of the period for filing written comments and objections under 405 KAR 8:010E, Sections 9 and 10.

Section 4. Notification and Request for Information. (1) The department shall periodically notify the petitioner of applications for a permit received which propose 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) Intervenors; and
(e) 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 by a newspaper advertisement. The notice shall identify the petitioner and provide the mailing address of the petitioner. The notice shall request submissions of relevant information and shall request that persons with an ownership or other interest of record in the property covered by the petition who wish to be notified of any hearing identify themselves to the department. 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(4), 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. This record shall be maintained at the central office of the bureau in Frankfort and the regional office within whose district the petition site is located.

(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; provided that when a permit application is pending before the department and such application involves an area in a petition, the department shall hold the hearing on the petition within ninety (90) days of its receipt. 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 record 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 in the area covered by the petition who has identified himself or herself to the department as set forth in Section 4(3) or who is otherwise actually known to the department.

(3) Notice of the hearing shall be sent by certified mail to the petitioner and any intervenors and by regular mail to the persons designated in subsection (2)(a) and (c) of this section, 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 land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the areas which would be affect by such surface coal mining operations;

(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 could 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) If the department does not designate a petitioned area under subsection (2) of this section, the secretary may direct that any future permits issued for the area contain specific requirements for minimizing the impact of surface coal mining operations on the feature that was the subject of the petition.

(4) 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.

(5) 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.

(6) 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.

(7) Any person having an interest which is or may be adversely affected by the department's final decision under subsection (6) of this section may request a formal hearing under 405 KAR 7:090E.

Section 9. Map. The department shall maintain a current map of areas designated as unsuitable for all or certain types of surface coal mining operations at each regional office and at the central office in Frankfort. Copies of such maps will be available for inspection and copying as prescribed in the Open Records Act, KRS 61.872 to 61.884. Such maps will periodically be distributed to appropriate federal, state, areawide, and local government agencies.

Section 10. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.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: December 29, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 on which the proposed operation would be conducted 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, 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)), 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) 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;

(c) 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 at least two (2) weeks before such public hearing;

(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 distances or 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" 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 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. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: December 28, 1981
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: December 29, 1981 at 10 a.m.

Amended Regulations Now In Effect

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
As Amended

804 KAR 4:220. Riverboats.

RELATES TO: KRS 243.030(25), 243.040(10)
PURSUANT TO: KRS 13:082, 241.060
EFFECTIVE: January 6, 1982
NECESSITY AND FUNCTION: KRS 243.030(25) and KRS 243.040(10) authorize the Alcoholic Beverage Control Board to issue such other special licenses as the Board may find necessary for the proper regulation and control of the traffic in alcoholic beverages. Although licenses have been provided for both airplanes and railroad cars, no such provision has been made for riverboats. The growth of excursion riverboat traffic in recent years necessitates the adoption of a license to permit the retail sale of malt beverages, distilled spirits and wine by the drink for consumption on the licensed vessel.

Section 1. Subject to the conditions set forth in this regulation, a special license may be issued for the retail sale of distilled spirits, wine and malt beverages for consumption on the premises of any boat, or other vessel licensed by the United States Coast Guard to carry 100 or more passengers for hire on navigable waters in or adjacent to this state.

Section 2. (1) Each boat or vessel must have a regular place of mooring in a county of this state in which the sale of distilled spirits by the drink is legal.
(2) A boat or vessel which would otherwise qualify for a special license under the provisions of this regulation, but which has a regular place of mooring outside this state, may be licensed if said boat has an alternative regular place of mooring that qualifies under subsection (1) of this section.

Section 3. The license fee for this special riverboat license shall be $600 per annum, and the fee shall be prorated as set forth in KRS 243.090(2). All such licenses shall expire at midnight June 30 of each year.

Section 4. The issuance of this license shall be at the discretion of the Distilled Spirits Administrator and the Malt Beverage Administrator.

Section 5. The licenses issued hereunder shall be nonquota licenses and shall not be transferable to other premises.

Section 6. Any time a boat or vessel licensed under the provisions of this regulation moors or makes landfall in a location other than its regular place of mooring, or alternate place of mooring as provided for by Section 2 of this regulation, all alcoholic beverages must be kept locked pursuant to the requirements of KRS 244.290 and 804 KAR 7:030.

Section 7. At no time may a boat or vessel licensed under the provisions of this regulation take on or discharge passengers when mooring or making landfall in dry option territory.

Section *8.* [7.] Except as provided herein, licenses issued under this regulation shall be governed by all the statutes and regulations governing licensed premises in the regular place of mooring or alternative place of mooring as contained in Section 2 of this regulation.

Section *9.* [8.] Proceedings relative to application, renewal, suspension or revocation of these licenses shall be conducted in the same manner and extent as regular retail drink and retail malt beverage licenses.

RICHARD H. LEWIS, Commissioner
ADOPTED: September 11, 1981
APPROVED: JAMES TAYLOR, Acting Secretary
RECEIVED BY LRC: September 11, 1981 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
As Amended

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, [224.033,] 318.130
EFFECTIVE: January 6, 1982
NECESSITY AND FUNCTION: *The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the kind, type and quality of plumbing fixtures that are to be used in the construction of plumbing systems.* [This regulation permits the use of a new concept for the treatment and purification of air in bath and toilet rooms. The cartridges in the fan unit contains a citrus by-product which removes bacteria and mold and eliminates the need to discharge and exhaust air to the outside of a building. It also eliminates a certain amount of heat loss. This regulation also permits the use of acrylic-faced bathtubs, a new concept for the protective coating used in the manufacture of fiberglass bathtubs. The test records that were submitted by the manufacturer of this product indicate that this coating is an improvement over the gel-coating that is presently being used.]

Section 1. Materials. All receptacles used as water closets, urinals, or otherwise for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, *except as indicated in Section 4.*

Section 2. Installation. All plumbing fixtures shall be installed free and open in a manner to afford access for cleaning. Where practical, all pipes from fixtures shall be run to the wall and no trap or pipe shall extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. Water closet bowls shall be made of one (1) piece and of such form as to hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim so constructed as to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. Plastic water closet bowl and tank shall be made with a polypropylene lining inside the one (1) piece bowl and tank. The outer surface of the bowl shall be constructed of PVC material and the filler material between the two (2) surfaces shall be made of polyurethane foam. The bowl shall have a three (3) inch water seal and shall have a two and one-eighth (2 1/8) inch waste opening passage.

Section *5.* [4.] Frost-Proof Closet. A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy. The room shall be tightly enclosed and accessible from the outside only. The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside. The building must have a non-absorbent floor. Each frost-proof water closet shall have a four (4) inch vent.

Section *6.* [5.] (1) Floor drains and shower drains. A floor drain or a shower drain is considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction. Shower drain pans shall be constructed of sheet lead weighing not less than four (4) pounds per square foot, non-plasticized chlorinated polyethylene conforming to ASTM D-412-66, D-1204-54 and D-568-61 not less than 0.040 inches or other approved material. Shower pans shall be constructed without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor below the outside grade level.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls. Fiberglass bathtubs and tub enclosures shall conform to Commercial Standards CS 221-59. Acrylic-faced bathtubs shall conform to ASTM E-84B or E-162. Fiberglass shower stalls and shower receptors shall conform to Commercial Standards CS 222-59.

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls shall conform to Commercial Standards CS 111-43.

Section *7.* [6.] Floor Drains, Shower Drains or Urinal Drains in Inaccessible Places. Floor drains, shower drains or urinal drains shall have a cast-iron P trap when installed under concrete floors or in inaccessible places. They shall be either caulk or screw type.

Section *8.* [7.] Fixture Strainers. All fixtures other than water closets and pedestal urinals shall be provided with a fixed strong, metallic or porcelain strainer. The total outlet area shall not be less than that of the interior area of the trap.

Section *9.* [8.] Fixture Overflow. The overflow pipe from a fixture shall be connected to the inlet side of a trap and be so arranged that it may be readily and effectively cleaned.

Section *10.* [9.] Ventilation of Rooms Containing Fixtures. Plumbing fixtures, except bedroom lavatories, shall not be located in any room which does not contain a window placed in an external wall or is not otherwise provided with adequate ventilation. The minimum size of the external fresh air inlet shall be two and one-fourth (2¼) square feet of opening. Where forced ventilation is used, the minimum change of air shall be six (6) times per hour and the vent must be extended to the outside of the building or a ductless fan may be used, provided:

(1) The unit bears the label of the Underwriter's Laboratories, Inc.;

(2) The unit is installed so as to operate at all times when the lighting circuit is activated;

(3) The unit be installed in either the wall or ceiling;

(4) The unit is installed in accordance with the manufacturer's recommendations;

(5) The manufacturer make available cartridges that will be replaced on a six (6) month basis;

(6) A unit be provided for each 800 cubic feet of room volume.

Section *11.* [10.] Fixture Additions. Any fixture or fixtures added to a plumbing system shall be installed to comply with the other sections of this code, and the discharge

from the additional fixture or fixtures shall enter the soil pipe below the lowest vented opening.

Section *12.* [11.] Defective Fixtures. All newly installed fixtures found defective or old fixtures found to be in an unsanitary condition, shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department.

Section *13.* [12.] Water Heaters. Water heaters shall be properly connected to the hot and cold water supply and shall be connected to an adequate size flue or chimney, but in no case shall this be connected to a flue serving a coal burning apparatus. The flue or chimney shall extend two (2) feet above the roof and be properly flashed and shall not terminate within six (6) feet of a door or window. If a water heater is placed in a closed room or closet the door must be a louver door.

JOHN R. GROVES, JR., Commissioner
ADOPTED: November 12, 1981
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: November 13, 1981 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
As Amended

815 KAR 20:160. ***Standards for subsurface sewage disposal systems other than residential*** **[Private and commerical septic systems].**

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
EFFECTIVE: January 6, 1982
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the size, type, *location* and construction of *subsurface sewage disposal systems as well as installation standards for all types of subsurface sewage disposal systems where the effluent discharges into the subsurface* [private and commercial septic systems].

Section 1. *Plans for all types of sewage systems must be submitted and approved prior to the time of installation. Such systems shall be designed in accordance with this regulation as well as regulation 815 KAR 20:141. Plans shall not be smaller than eleven (11) x seventeen (17) inches and shall be of sufficient size to properly illustrate the proposed system. The plans shall locate the sewage system, the location of the percolation test holes and the rock soundings by dimensions to some reference point, building, etc. All plans shall include the results of an approved percolation test along with a complete soil study.* [(1) The design, structure and material used in the construction of all septic tanks must be approved by the department. Written approval must be obtained for the manufacturer of prefabricated and commercial septic tanks. Septic tanks shall have a minimum working capacity of 500 gallons. If a garbage grinder is used, the septic tank capacity shall be increased fifty (50) percent.]

[(2) A disposal field serving a septic tank shall consist of not less than 200 feet of lateral drain with a two (2) feet trench having 400 square feet of ditch bottom. The lateral system shall be constructed of either four (4) inch farm tile, perforated bituminous fiber pipe or other approved material laid in not less than six (6) inches of No. 3 rock, top and bottom of the piping. All lateral lines shall be laid level. If farm tile is used, the top of the joints shall be covered with a three (3) inch strip of tar paper. If two (2) or more lines are laid paralled, the trenches shall be at least six (6) feet apart. A distribution box shall be installed following a septic tank and in installations placed in other than level terrain. The minimum size shall be eighteen (18) inches square and the bottom shall be six (6) inches lower than the outlets to the drain field. Distribution boxes shall be constructed with a tight cover and shall be of concrete, brick, or salt glaze tile or other approved material. Roof drains shall not discharge into a septic tank or drain field.]

[(3) The location of a septic tank shall not be closer than ten (10) feet from a building nor fifty (50) feet from a well or cistern. The location of a lateral drainage system shall be not be closer than twenty (20) feet from a building, nor five (5) feet from a property line, nor seventy (70) feet from a well or cistern. The location of a seepage pit shall not be closer than twenty-five (25) feet from a building nor 100 feet from a well or a cistern.]

[(4) A house sewer shall not be installed within a radius of fifteen (15) feet of a well or cistern. All house sewers in between a fifteen (15) feet and fifty (50) feet radius of a well or cistern shall be constructed of extra heavy or service weight cast iron pipe with approved joints. All house sewers beyond a fifty (50) feet radius of a well or cistern may be salt glazed vitrified pipe, bituminous fiber pipe, cement asbestos pipe or other material approved by the department with approved joints.]

Section 2. (1) Septic tanks. Septic tanks shall be designed in accordance with the standards of the department. They may be constructed of either poured or precast concrete, steel, fiberglass, polyethylene or other material approved by the department. They must receive prior approval before they are used.

(2) Sewage treatment plants. Sewage treatment plants shall be constructed of either poured or precast concrete, steel, fiberglass, polyethylene or other materials approved by the department and shall receive prior approval by the department before they are used.

Section 3. Distribution Boxes. Distribution boxes may be constructed of poured or precast concrete, fiberglass, steel or polyethylene plastic. They must be so designed as to accomplish the desired elevations that are denoted in Section 5. They must have prior approval by the department.

Section 4. Percolation Tests and Soil Evaluations. Percolation tests shall be conducted in a manner prescribed in regulation 815 KAR 20:141. A percolation test report shall include among other things the type of soil by name, seasonal high water table and the earth cover over rock. Percolation tests shall be conducted at distances not to exceed fifty (50) feet in all directions within the area where a proposed sewage system will be constructed.

Section 5. Subsurface Sewage Disposal System (Lateral System). A subsurface sewage disposal system or lateral system shall be constructed by the use of trenches two (2) feet wide and approximately thirty (30) inches deep. Lateral lines shall not exceed 100 feet in length and must

not be closer than eight (8) feet on centers. If the area in which the lateral system is to be installed has no more than a three (3) percent grade, it may be constructed by the use of one (1) distribution box where at least three (3) of the lateral lines are connected along the discharge piping from septic tank or treatment system. The invert of the discharge piping from the treatment plant or septic tank must be at least two (2) inches above the invert piping from the lateral lines entering the distribution box. All lateral lines from the distribution box must be at the same elevation. There must be at least two (2) feet of solid pipe laid on compacted earth between the distribution box and each section of the lateral system. When a lateral system is installed in an area that has more than a three (3) percent grade the lateral lines shall be placed not closer than eight (8) feet on center and each lateral line must be laid level. Distribution boxes shall be provided in the center of each lateral line. The lateral lines on each side of the distribution box must be on the same elevation while the invert elevation of the waste piping from the septic tank or treatment plant or from one (1) distribution box to the other shall be at least six (6) inches above the invert of the lateral line that enters the distribution box. The piping from the treatment plant and the space between the distribution boxes must be sealed piping as well as piping at a distance not to exceed two (2) feet from each distribution box before connecting into the lateral system. The lateral system laid in an area with a grade three (3) percent or less shall have each segment of the lateral system laid level. In the area where the grade is greater than three (3) percent each parallel segment of the lateral system must be laid level. All lateral lines must be constructed in a two (2) foot wide trench by placing six (6) inches of #3 limestone rock beneath and above the distribution piping system. This distribution piping may be either unglazed tile or concrete pipe in one (1) foot sections, continuous perforated polyethylene piping or other materials approved by the department.

Section 6. Sizing of Private Sewage Disposal Systems—Septic Tank or Treatment Plant. (1) The minimum size of a private sewage disposal system shall consist of a 500 gallon septic tank or treatment plant followed by a minimum of 200 feet of lateral drainage system.

(2) A private sewage disposal system for homes shall conform to regulation 815 KAR 20:141.

(3) Notwithstanding subsection (1) of this section, sewage systems for buildings other than homes shall be sized by using the tables listed below which indicates the water usage relating to its use.

Table 1
Quantities of Sewage Flows

Type of Establishment	Gallons Per Person Per Day (Unless Otherwise Noted)
Airports (per passenger)	5
Apartments (per bedroom)	250
Bathhouses and swimming pools	10
Bathhouses (others)	20
Camps:	
Campground with central comfort stations	35
With flush toilets, no showers	25
Construction camps (semi-permanent)	50
Day camps (no meals served)	15
Resort camps (night and day) with limited plumbing	50
Luxury Camps	100
Factories:	
(Per person, per shift, exclusive of industrial wastes)	35
Hospital (per bed space)	250
Surgicenters (per bed space)	300
Institutions other than hospitals	
Nursing homes and similar institutions	125
Mobile home parks (per space)	250
Motels (per room)	125
Picnic parks:	
With bathhouses, showers and flush toilets	10
Restaurants (per meal served)	15
Schools:	
Boarding (per student)	100
Elementary (per student)	25
High (per student)	35
College (per student)	35
Service stations (minimum)	1000
Theaters:	
Movie (per auditorium seat)	5
Drive-in (per car seat)	5
Travel trailer parks:	
Without individual water and sewer hook-ups (per space)	75
With individual water and sewer hook-ups (per space)	150
Construction sites (per person)	35

Section 7. Length or Footage of Lateral System Required. The length or footage of the lateral system required shall be computed by the use of the following table.

Table 2
Allowable Loading For Sub-soil Drainage Systems

Time of Water to Drop One Inch, Expressed In Minutes	Lineal Footage of Tile Using 2′ Trench, Per 100 Gallon of Sewage Per Day
15	34.0
20	42.0
25	52.0
30	63.0
35	69.5
40	73.5
45	76.5
50	82.5
55	86.5
60	89.0

Section 8. Location of Septic Tank or Sewage Treatment Devices. (1) Septic tanks shall not be closer than ten (10) feet from a building, five (5) feet from a property line or fifty (50) feet from a well or cistern.

(2) Sewage treatment devices shall not be closer than fifty (50) feet from a building, fifteen (15) feet from a property line nor fifty (50) feet from a well or cistern.

Section 9. (1) Lateral fields [Septic tanks and sewage treatment devices] shall not be closer than seventy (70) feet from a well or cistern.

(2) No sewer pipe shall be within fifteen (15) feet of a well or cistern. All sewer piping within a radius of fifteen (15) to fifty (50) feet of a well or cistern must be of extra heavy or service weight cast iron pipe or schedule 40 or 80 ABS or PVS plastic pipe.

JOHN R. GROVES, JR., Commissioner
ADOPTED: November 13, 1981
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: November 13, 1981 at 3:30 p.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
As Amended

904 KAR 2:100. Home energy assistance program; eligibility, criteria.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: January 6, 1982
NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 194.050 to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to offset the rising costs of home energy that are excessive in relation to household income. This regulation sets forth the eligibility and payments criteria for each of two (2) components of energy assistance, regular and crisis, under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and payment amount in accordance with the procedural requirements prescribed by the department.

Section 2. Definitions. Terms used in HEAP are defined as follows: (1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.

(3) "Household" is defined as one (1) or more persons who share common living arrangements in a principal residence within the Commonwealth of Kentucky.

(4) A "fully vulnerable household" is any household which pays all energy costs directly to the energy provider or any household which rents nonsubsidized housing whose energy costs are included in the rent payment.

(5) "Regular component" is that portion of benefits reserved as energy assistance for heating for households containing at least one (1) member who is elderly (age sixty (60) or older) or disabled (as defined by Titles II, XVI, and XIX of the Social Security Act).

(6) "Crisis component" is that portion of benefits reserved for use as emergency energy assistance after the regular component is terminated for eligible households in emergency or crisis situations.

Section 3. Eligibility Criteria. A household must meet the following conditions of eligibility for receipt of a HEAP payment:

(1) The household must be fully vulnerable for energy cost.

(2) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.

(3) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and CETA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$359	$4,310
2	474	5,690
3	589	7,070
4 or more	704	8,450

(4) Applicants for the crisis component must attest financial inability to obtain or retain energy for heating and that the applicant is or will be without energy for heat within the next fifteen (15) days or has received a final termination notice.

(5) The household must have total liquid assets at the time of application of not more than $3,000. Excluded assets are cars, household or personal belongings, primary residence, cash surrender value of insurance policies, and prepaid burial policies.

Section 4. Payment Levels. Payment amounts are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) For the regular component, payments to eligible households will be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
$ 0-$250	$225	$250
$251-$500	$189	$213
over $500	— [$150]	$175

Scale B.
Energy Sources: Wood, Natural Gas, Coal

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
$ 0-$250	$175	$200
$251-$500	$138	$163
over $500	— [$100]	$125

(2) Benefit amounts for crisis component applicants shall not exceed the amount required to alleviate the crisis, subject to the maximums in the above benefit scales. Payment shall be made for only one (1) crisis per household. Payment amounts shall be determined by whether the energy provider uses a continuous (e.g., monthly, bimonthly) or noncontinuous (e.g., gets payment at time of each delivery) billing cycle and by whether the applicant has arrearages as follows:

(a) If the energy provider uses a continuous billing cycle, arrearages plus current month charges billed will be paid not to exceed the maximum per household.

(b) If the energy provider uses a nontinuous billing cycle, payment will be made for the delivery of fuel not to exceed the maximum. Arrearages will not be paid unless there is no other available vendor, and the available vendor will deliver fuel only on receipt of payment for arrearages. In such instances payment for arrearages plus current delivery may not exceed the maximum per household.

(3) If the applicant incurs an indirect fuel cost through a rent payment, the amount of the payment shall be the amount of rent owed for arrearages and the current month, not to exceed the maximum in the benefit chart.

(4) If the Department for Human Resources receives only a percentage of the federal funds authorized by Congress, benefits to eligible households in the regular component may be reduced proportionately.

Section 5. Payment Methods. Payments to eligible households will be made as follows:

(1) Payment authorization under the regular component is of two (2) types:

(a) If the recipient utilizes an energy provider who has a continuous billing cycle, payment is authorized by a two-party check paid payable to the provider and the recipient, except that a direct provider payment may be authorized if necessary to obtain energy.

(b) When there is no continuous billing cycle or heating is included as an undesignated portion of rent, payment shall be made by a check payable to the recipient.

(2) Payment authorization under the crisis component is made by two-party check to the provider/landlord and recipient unless the provider/landlord refuses to accept a two-party check. In this instance, the check shall be made payable to the recipient only.

(3) At the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed maximums. The household will decide how to divide payment if more than one (1) provider is used.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. The department shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the regular component shall be accepted beginning January 4, 1982, and ending no later than January 15, 1982, at the close of business.

(2) Applications for the crisis component shall be accepted beginning January 18, 1982.

(3) Applications shall be processed in the order taken until funds are expended. HEAP shall be terminated by the Secretary when actual and projected program expenditures have resulted in utilization of available funds.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

Section 9. Allocation of Funds. (1) Fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Sixty (60) percent of benefit funds shall be reserved for use in the regular component. Funds shall be allocated for use in each Area Development District (ADD) based on the number of Supplemental Security Income recipients in the ADD. Funds unobligated by the close of business January 15, 1982, shall be available for use in the crisis component.

(3) Forty (40) percent of benefit funds shall be reserved for use in the crisis component. Funds shall be allocated for use in each Area Development District based on the number of households with income at or below 100 percent of poverty level.

(4) As prescribed by the Secretary, up to $150,000 of benefit funds may be set aside for use in select geographic areas, for the purpose of purchasing alternative means of energy. To the extent this benefit is provided a recipient, it will replace the benefit that household would otherwise receive.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the

HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; and

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

Section 11. 904 KAR 2:088 and 2:088E, Home energy assistance program, are hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 13, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 13, at 2:20 p.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
As Amended

904 KAR 3:070. Fair hearings.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: January 6, 1982
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended and 7 CFR Part 270 and 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the fair hearing procedures used by the department to administer the food stamp program.

Section 1. Availability of Hearings. The department shall provide a fair hearing to any household aggrieved by any action of the department which affects the participation of the household in the food stamp program. The department shall provide state level fair hearing conducted by state level hearing officers which shall be carried out at the local level.

Section 2. Timely Action on Hearing Requests. The department shall acknowledge all hearing requests, conduct a hearing, and issue a decision within sixty (60) days of a request for a fair hearing. Decisions which result in an increase in houshold benefits shall be reflected in the coupon allotment within ten (10) days of the receipt of the hearing decision even if the department must provide a supplementary ATP or otherwise provide the household with an opportunity to obtain the allotment outside the normal issuance cycle. However, the department may take longer than ten (10) days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within sixty (60) days from the household's request for the hearing. Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

Section 3. Agency Conference. The department shall offer an agency conference to households adversely affectd by a departmental action. The household shall be advised that an agency conference is optional and will in no way delay or replace the fair hearing process. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal *of its request for a hearing*. The agency conference is to be attended by the eligibility worker, his/her supervisor, and the household member and/or representative. An agency conference for households contesting a denial of expedited service shall be scheduled within two (2) working days, unless the household requests that it be scheduled later or states no agency conference is wanted.

Section 4. Group Hearings. The department may respond to a series of individual requests for fair hearings by conducting a single group hearing. Hearing cases may be consolidated only where individual issues of fact are not disputed and if the sole issue is one of federal law, regulation or policy. In all group hearings the policies governing hearings must be followed. Each individual client shall be permitted to present his own case or be represented by legal counsel or other spokesperson.

Section 5. Postponement of Hearings. Households may request and are entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed thirty (30) days from the date of the postponement request and the time limit for action on the decision may be extended for as many days as the hearing is postponed.

Section 6. Notification of Rights to Request a Hearing. At the time of application the department shall notify each household in writing of its right to a hearing, of the method by which a hearing may be requested and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the department that it disagrees with the departmental action, it shall be reminded in writing of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall be informed in writing of the availability of that service.

Section 7. Request for Hearings. *Any* [A] household [or] member shall *have the right* [be allowed] to request a hearing on any action by the department *which affects the participation of the household in the program and* [or loss of benefits] which occurred in the prior ninety (90) days. [A household shall be allowed to request a hearing on any action by the department or loss of benefits which occurred in the prior ninety (90) days.] Action by the department shall include a denial of a request for restoration of any benefits lost more than ninety (90) days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

Section 8. Departmental Responsibilities on Hearing Request. A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the department may request the

household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(1) Upon request, the department shall make available, without charge, the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. Upon request, the department shall also help a household with its hearing request. If a household makes an oral request for a hearing, the department shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The department shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision *and restoration of benefits, if the decision so indicates,* before they leave the area.

Section 9. Denial or Dismissal of a Fair Hearing Request. The department shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in Section 7.

(2) The client or his representative withdraws in writing a request for a hearing at any time prior to the release of the hearing officer's decision.

(3) The household or its representative fails to appear to the scheduled hearing without good cause, as defined below:

(a) The household member was away from home during the entire filing period; or

(b) The household member is unable to read or to comprehend the notice; or

(c) The household member moved and a delay resulted in receiving inadequate notice; or

(d) Serious illness of a household member; or

(e) The delay was no fault of a household member; *or*

(f) The household member did not receive the notice.

Section 10. Continuation of Benefits. Households which request a fair hearing *within the period provided on the notice of adverse action* shall be allowed to continue participation in the program on the basis authorized immediately prior to notice of adverse action [provided that such household requests a hearing within the period provided on the notice of adverse action and] provided its certification period has not expired *unless the household specifically waives continuation of benefits.* If the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the state agency shall consider the request timely received. If the household fails to request a hearing within the notice period for good cause, benefits shall be reinstated on the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue is *that* food stamp eligibility or benefits were improperly computed or that federal law or regulation is being misapplied or misinterpreted by the department. *Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:*

(a) The certification expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the department; or

(b) The hearing officer makes a preliminary determination in writing and at the hearing, that the sole issue is one of federal law or regulation and no question of fact is involved; or

(c) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or

(d) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(e) The household or representative fails to appear at the hearing without good cause. Attendance is not required at a group hearing.

Section 11. Notification of Time and Place of Hearing. The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household. At least ten (10) days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice shall:

(1) Advise the household or representative of the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(2) Specify that the department will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the department's procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

Section 12. Hearing Official. The department shall designate a hearing official who does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; was not the immediate supervisor of the eligibility worker who took the action and is an employee of the department. The power and duties of the hearing official shall be as follows:

(1) Adminster oaths or affirmations;

(2) Insure that all relevant issues are considered;

(3) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(5) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the department;

(6) Subpoena relevant and useful information or individuals;

(7) Provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the department in accordance with Section 14.

Section 13. Rights During Hearing. During the hearing process the household or its representative must be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at anytime during working hours before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the department to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the department shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses, friends or relatives.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

Section 14. Hearing Decisions. (1) Decisions of the hearing officer shall comply with federal law and regulation and will be based on the hearing record. The recording of testimony and exhibits, and an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with 904 KAR 3:050, Section 7. This record shall also be available to the household or its representative during working hours for copying and inspection.

(2) A decision by the hearing authority shall be binding on the department and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent manual section and corresponding federal regulation. The decision shall become a part of the record.

(3) The household and the local office shall each be notified in writing of: The decision; the reasons for the decision; the available appeal rights; and that the household's benefits will be issued or terminated as decided by the hearing authority. The notice shall also state that an appeal may result in a reversal of the decision.

(4) After a department's hearing decision which upholds the department's action, the household shall be notified of the right to pursue judicial review of the decision. In addition, the household shall be notified of the right to appeal their case to the appeal board in accordance with Section 16.

Section 15. Implementation of Hearing Decision. The department shall insure that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in Section 2.

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household. The department shall restore benefits to households which are leaving the county before the departure whenever possible. If benefits are not restored prior to the household's departure, the county shall forward an authorization *for* [to the] benefits to the household or to the county if [this information is] known. The county shall accept an authorization and issue the appropriate benefits whether the *authorization* [notice] is presented by the household or received directly from another county.

(2) When the hearing authority upholds the department's action, a claim against the household for any overissuances shall be prepared.

Section 16. Appeal Board. Households dissatisfied with the hearing officer's decision may appeal to the appeal board within twenty (20) days from the date of the hearing decision. Within forty-five (45) days of receipt of the request for an appeal of a fair hearing decision, the department shall ensure that the review is conducted, *and that* a decision is reached. *The decision shall be* [and] reflected in the coupon allotment *within ten (10) days of the decision.*

Section 17. Judical Review. Households aggrieved by the appeal board's decision shall have the right to appeal this decision to the court of appropriate jurisdiction.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 6, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 9, 1981 at 9:45 a.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
Division for Unemployment Insurance
As Amended

904 KAR 5:240. Eligibility standards for extended benefits.

RELATES TO: KRS 341.710
PURSUANT TO: KRS 13.082, 194.050, 341.115
EFFECTIVE: January 6, 1982
NECESSITY AND FUNCTION: This regulation sets additional criteria for establishing eligibility for extended unemployment insurance benefits; and implements the mandatory federal requirements set forth in Public Law 96-499.

Section 1. An individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the secretary finds that during such period:

(1) He fails to accept any offer of suitable work (as defined in Section 5 of this regulation) or fails to apply for any suitable work to which he was referred by the state agency; or

(2) He failed to actively engage in seeking work as prescribed under Section 3 of this regulation.

Section 2. Duration of Ineligibility. Any individual who has been found ineligible for extended benefits by reason

of the provisions in Section 1 of this regulation shall be denied benefits *for* [beginning with the first day of the week following] the week in which such failure occurred and *thereafter and* until he has been employed *in* [during] at least four (4) subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four (4) times the extended weekly benefit amount.

Section 3. Active Search for Work. For the purpose of subsection (2) of Section 1 of this regulation an individual shall be treated as actively engaged in seeking work during any week if:

(1) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(2) The individual furnishes tangible evidence that he has engaged in such effort during such week.

Section 4. Referral by the Employment Service. The employment service shall refer any claimant entitled to extended benefits under this Act to any suitable work which meets the criteria prescribed in Section 5 of this regulation.

Section 5. Suitable Work. No work shall be deemed to be suitable work for an individual, nor a disqualification imposed for refusal thereof, which does not accord with the labor standard provisions required by 3304(a)(5) of the Internal Revenue Code of 1954, set forth in KRS 341.100 *or if a worker would not be denied benefits by reason of the requirements set forth in KRS 341.350 as required by Section 3304(a)(8) of the Internal Revenue Code of 1954.*

(1) For purposes of this regulation, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(a) The individual's extended weekly benefit amount as determined under KRS 341.720; plus

(b) The amount, if any, of supplemental unemployment benefits (as defined in Section 501(e)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further

(c) Pays wages not less than the higher of:

1. The minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

2. The applicable state or local minimum wage;

(d) Provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

1. The position was not offered to such individual in writing, or listed with the employment service;

2. Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in KRS 341.100, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this regulation;

3. The individual furnishes satisfactory evidence to the Commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in KRS 341.100 without regard to the definition specified by this paragraph.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 6, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 9, 1981 at 9:45 a.m.

Proposed Amendments

AGRICULTURAL EXPERIMENT STATION
Division of Regulatory Services
(Proposed Amendment)

12 KAR 1:020. Noxious-weed seed.

RELATES TO: KRS 250.020 to 250.170
PURSUANT TO: KRS 250.100
NECESSITY AND FUNCTION: To designate the kinds of weed seed to be noxious in Kentucky and to establish the maximum permitted rate of occurrence in agricultural seed.

Section 1. The following kinds of weed seed are designated noxious in Kentucky and the maximum permitted rate of occurrence per [ounce] of agricultural seed is established:

Name of Kind	Allowed Per *Pound* [Ounce]
Balloonvine (Cardiospermum halicacabum	*0*
Purple Moonflower (Ipomea-turbinata	*0*
Canada Thistle (Cirsium arvense)	0
Johnsongrass (Sorghum halepense) and sorghum almum and perennial rhizomatous derivitives of these	0
Quackgrass (Agropyron repens)	0
Annual Bluegrass (Poa annua)	*256* [16]
Buckhorn Plantain (Plantago lanceolata)	*304* [19]
Corncockle (Agrostemma githago)	*192* [12]
Dodder (cuscuta spp.)	*192* [12]
Giant Foxtail (Setaria faberii)	*192* [12]
Ox-eye Daisy (Chrysanthemum leucanthemum)	*256* [16]
Sorrel (Rumex acetosella)	*256* [16]
Wild Onion and Wild Garlic (Allium spp.)	*96* [6]

Section 2. Seed which contains in excess of a sum total of *480* [thirty (30)] noxious weed seed per *pound* [ounce] (subject to the above limitations) is prohibited from sale in Kentucky.

CHARLES E. BARNHART, Director
ADOPTED: December 18, 1981
RECEIVED BY LRC: December 28, 1981 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Kentucky Agricultural Experiment Station, Agricultural Science Building, North, University of Kentucky, Lexington, KY 40546.

AGRICULTURAL EXPERIMENT STATION
Division of Regulatory Services
(Proposed Amendment)

12 KAR 1:105. Schedule of charges.

RELATES TO: KRS 250.020 to 250.170
PURSUANT TO: KRS 250.100
NECESSITY AND FUNCTION: To establish a schedule of charges for service tests, analysis, and examination of seed samples submitted by residents and non-residents of Kentucky to the Seed Laboratory of the Kentucky Agricultural Experiment Station.

Section 1. Any person may submit to the Seed Laboratory of the Kentucky Agricultural Experiment Station samples of seed for analysis, test, and examination. The following service charges for such samples will be assessed. Non-residents will be assessed an additional charge of *two dollars ($2)* [one dollar ($1)] per sample. Any Kentucky citizen may submit one (1) sample per year for test free of charge provided that the sample is accompanied by a signed statement: "I certify that I have not previously submitted a sample for free test during the current calendar year (signature)."

(1) Schedule of charges for complete test, purity analysis and noxious weed seed examination only, and germination test only.

Table 1. Schedule of Charges for:

Kind of Seed	*Complete Test**	*Purity and Noxious Only***	*Germination Only*
Alfafa	*$6.00*	*$5.00*	*$4.00*
Bentgrass	*8.00*	*6.00*	*4.00*
Bermudagrass	*8.00*	*6.00*	*4.00*
Bluegrass	*8.00*	*6.00*	*5.00*
Bromegrass	*8.00*	*6.00*	*4.00*
Cane	*6.00*	*5.00*	*4.00*
Cereals	*6.00*	*5.00*	*4.00*
Clovers	*7.00*	*5.00*	*4.00*
Corn	*6.00*	*5.00*	*4.00*
Crown vetch	*6.00*	*5.00*	*4.00*
Fescue	*7.00*	*5.00*	*4.00*
Lespedeza	*8.00*	*6.00*	*4.00*
Lovegrass	*8.00*	*7.00*	*5.00*
Millet	*6.00*	*5.00*	*4.00*
Milo	*6.00*	*5.00*	*4.00*
Orchardgrass	*8.00*	*6.00*	*5.00*
Redtop	*8.00*	*6.00*	*5.00*
Ryegrass	*7.00*	*6.00*	*5.00*
Sorghum	*6.00*	*5.00*	*4.00*
Sorghum—Sudan-grass Hybrid	*6.00*	*5.00*	*4.00*
Soybean	*6.00*	*5.00*	*4.00*
Sudangrass	*6.00*	*5.00*	*4.00*
Timothy	*7.00*	*6.00*	*4.00*
Tobacco	*8.00*	*6.00*	*4.00*
Vegetables	*7.00*	*5.00*	*4.00*
Vetch	*6.00*	*5.00*	*4.00*

Schedule of charges for mixtures: Add germination charge for each additional kind of seed in the mixture.

[Table 1. Schedule of Charges for:

Kind of Seed	Complete Test*	Purity and Noxious Only**	Germination Only
Alfafa	$3.00	$2.00	$2.00
Bentgrass	4.00	3.00	2.50
Bermudagrass	4.00	3.00	2.50
Bluegrass	4.00	3.00	2.50
Bromegrass	4.00	3.00	2.50
Cane	3.00	2.00	2.00
Cereals	3.00	2.00	2.00
Clovers	3.50	2.50	2.00
Corn	3.00	2.00	2.00
Crown vetch	3.00	2.00	2.00
Fescue	3.50	2.50	2.50
Lespedeza	4.00	3.00	2.00
Lovegrass	4.00	3.50	2.50
Millet	3.50	2.50	2.00
Milo	3.00	2.00	2.00
Orchardgrass	4.00	3.00	2.50
Redtop	4.00	3.00	2.50
Ryegrass	3.50	2.50	2.00
Sorghum	3.00	2.00	2.00
Sorghum—Sudan-grass Hybrid	3.50	2.50	2.00
Soybean	3.00	2.00	2.00
Sudangrass	3.50	2.50	2.00
Timothy	3.50	2.50	2.00
Tobacco	3.00	2.00	2.00
Vegetables	3.00	2.00	2.00
Vetch	3.00	2.00	2.00]

[Table 2. Schedule of charges for:

Mixtures	Complete Test*	Purity and Noxious Only**	Germination Only
2 components	$5.00	$4.00	$3.00
3 components	6.00	5.00	4.00
4 components	7.00	6.00	5.00
More than 4 components	8.00	7.00	6.00]

*Complete Test includes a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.
**Purity and Noxious Only includes a purity analysis and a noxious weed seed examination (for Kentucky only).

(2) Schedule of charges for noxious weed seed examination only and *for special tests* [moisture test]:
(a) Noxious weed seed examination.
1. [(a)] For Kentucky *only—$4.00* [—$2]
2. [(b)] For All States—*$5.00* [$3]
(b) [(c)] Moisture Test—*$4.00* [$2]
(c) Seed Count per Pound—$4.00
(d) Hypocotyl Color Test—$6.00
(e) Vigor Test
1. Three (3) day Growth Rate—$3.00
2. Accelerated Aging (AA)—$7.00
(3) Additional information. Any re-examination of a sample to secure information not furnished on the original report, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, will be subject to a charge in proportion to the amount of work required.

Section 2. Charges for kinds not listed above will be according to other kinds of similar size.

Section 3. Uncleaned seed and low grade screenings will not be tested.

CHARLES E. BARNHART, Director
ADOPTED: December 18, 1981
RECEIVED BY LRC: December 28, 1981 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Kentucky Agricultural Experiment Station, Agricultural Science Building, North, University of Kentucky, Lexington, KY 40546.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:057. Credit for military service.

RELATES TO: KRS 161.507
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.507 provides for the crediting for retirement purposes time spent on active duty with the Armed Forces of the United States, with certain limitations. This regulation sets up the procedures for validating and crediting such active duty service.

Section 1. A member may receive credit toward retirement as provided in KRS 161.507, upon meeting the eligibility requirements and payment of contributions to the Teachers' Retirement System as provided in this regulation. Such credit may be credited only if discharge was other than dishonorable. Service credit shall be considered as Kentucky teaching service, except that it may not be used for meeting the five (5) years of Kentucky service required to qualify for regular service or disability retirement. Such credit shall be credited in meeting the requirements for early retirement.

Section 2. A maximum of six (6) years of active military service may be credited to a member's retirement account. Active duty of less than six (6) months duration shall not be credited toward service for retirement purposes, unless teaching service was interrupted by such duty, *or unless the member received a discharge for medical reasons.*

Section 3. A member may purchase credit for one (1) month of retirement credit for each month or part of a month of active military service. The latest years of military service shall be considered first in allowing credit toward retirement.

Section 4. A member, having valid service credit in the Teachers' Retirement System and one (1) of the other state supported retirement systems of Kentucky, may elect to purchase retirement credit for active duty time in either of the systems concerned, or the service credit may be divided

between the two (2) systems. If the service is to be divided the following additional requirements must be met:

(1) The total service credited in all systems may not exceed six (6) years.

(2) The same years active duty may not be used in more than one (1) system.

(3) Each system shall calculate the cost of such retirement service credit in accordance with the statutes and regulations governing that system.

Section 5. Retirement service credit for military service performed shall be allowed only if the member desiring such service credit contributes to the Teachers' Retirement System a sum equal to thirty-five (35) percent of the actuarial cost for each year so credited. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of the required contribution.

PAT N. MILLER, Executive Secretary
ADOPTED: December 21, 1981
RECEIVED BY LRC: January 13, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: 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 11:045. Written offers to be submitted to owner-client.

RELATES TO: KRS 324.160
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. Each licensee shall, without undue delay, submit all written offers to lease or purchase real estate for which said licensee is agent to his principal or owner-client for the decision of said owner-client for his acceptance or rejection.

Section 2. Each licensee, who represents a prospective purchaser, shall, without undue delay, submit all written offers to lease or purchase real estate from his client, to the owner of such property or to the owner's real estate agent if he is represented by a real estate agent.

JACK H. NEELY, Chairman
ADOPTED: December 10, 1981
RECEIVED BY LRC: December 17, 1981 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to the Kentucky Real Estate Commission, 100 East Liberty Street, Suite 204, Louisville, Kentucky 40202.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Nursing
(Proposed Amendment)

201 KAR 20:070. *Licensure by* [Licensing;] examination.

RELATES TO: KRS 314.041(1), 314.051(1)
PURSUANT TO: KRS Chapter 314
NECESSITY AND FUNCTION: To assure that *applicants* [graduates applying] for *licensure by examination meet* [licenses have met] minimum standards set forth by the board as necessary for safe practice. To provide some security in the examination process.

Section 1. *Eligibility for licensure by examination.* [(1)] To be eligible *for licensure by* [to write the licensing] examination, applicants shall*:* [have completed the program of instruction and supervised practice to the satisfaction of the nursing faculty and a record of their achievement shall be on file in the board office.]

(1) Hold a high school diploma or equivalent.

(2) Have completed a state approved program of practical nursing for licensed practical nursing or a state approved program of registered nursing for registered nurse licensure.

(3) Submit an official transcript of nursing program.

(4) Submit at least thirty (30) days prior to the date of the examination:

(a) A properly executed application;

(b) Current examination fees;

(c) Current licensure fee; and

(d) Two (2) photographs (two (2) x three (3) inches) taken within the past six (6) months with the photographs signed by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program (if graduated therefrom) on the back of the photographs. Snapshots are not acceptable.

[(2) The application for licensure by examination properly executed, together with the current examination fee and licensure fee and two (2) recent (within past six (6) months) passport type photographs shall be on file in the board office at least thirty (30) days before the date of the examination.]

[(3) The applicant shall sign the photographs on the front under the facial features. The director of the nursing program from which the applicant graduated shall sign the photograph on the back.]

(5) Submit official copy(ies) of court record(s) of any misdemeanor and/or felony conviction(s) with a letter of explanation.

(6) Notify the board in writing as soon as any new address is established after submitting the application.

(7) [(4)] *Submit* a copy of a marriage certificate or court order [shall be supplied by a candidate who wishes] to change [his/her] name after the original application is filed.

(8) Abide by and cooperate with security procedures established by the board, when taking the examination.

(9) [(5)] *Achieve a minimum passing* [A] standard score of 350 on the state board test pool examination *or its equivalent* [shall be the minimum passing score] *as reported for licensed practical nurse or registered nurse licensure. Effective with the July, 1982 examination administration, achieve a minimum passing score of 1600 on the national council licensure examination for registered nurse licensure.*

Section 2. Graduates of Foreign Nursing Schools. (1) To be eligible for application for licensure by examination, graduates of foreign nursing schools shall submit evidence of the following:

(a) Certificate showing successful completion of commission on graduates of foreign nursing schools examinations (registered nurse applicants only).

(b) Verification of licensure as a nurse in another country with only a statement from the licensing authority that the license is in good standing and has not been revoked, suspended, probated, or otherwise disciplined in that country.

(c) Legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor.

(2) Applicants for licensure by examination shall meet requirements as stated in Section 1.

(3) Citizens of the United States who are graduates of foreign nursing schools shall show evidence of citizenship, thereby meeting requirements pertaining to citizenship privileges and shall meet all other requirements of this section and as stated in Section 1.

(4) The applicant shall have a satisfactory comprehension of the English language written and spoken which shall be established by a written examination (CGFNS) and an interview with a representative of the board.

(5) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

(6) The applicant shall pay all necessary fees to show evidence of meeting requirements of this section.

(7) An application is valid for a period of one (1) year from date of submission to board. After one (1) year, the applicant must submit new application, current fee and, if applicable, evidence of legal residency in the United States.

Section 3. Licensing examination standards. (1) The applicant shall pass the state board test pool examination or an examination acceptable to the board.

(2) An applicant who has taken any examination other than the state board test pool examination subsequent to 1953 shall provide evidence to the board that such examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) Norms for each administration of the examination are derived from at least 10,000 candidates who are recent graduates of a nursing program and who are writing the examination for the first time;

(c) The examination is available in the English language;

(d) The examination test plan blueprint is available for board review and identifies, to the satisfaction of the board, test content and content weightings equivalent to that delineated for the state board test pool examinations;

(e) Test items are available for board review and demonstrate to the satisfaction of the board the testing of competency necessary for safe practice;

(f) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(g) The examination is revised after each administration to insure currency and security of content;

(h) The examination is given under strict security measures;

(i) Acceptable passing scores shall be no more than one and one-half (1½) standard deviations below the mean of the norm group.

Section 4. Rewriting the examination. [(6)] *Examination* candidates who fail to achieve a passing score may rewrite the examination after meeting the requirements *as stated in Section 1 and, if applicable, Section 2 of this regulation* [of 201 KAR 20:130 and submitting the proper credentials] *and submission of current* [and] examination fee. *Effective with the July, 1982 examination administration, any registered nurse candidate who has not achieved a passing score must write the entire examination.*

Section 5. Release of Examination Scores. [(7)] The board shall not release [state board test pool] examination scores to any individual or agency without written authorization from the applicant or licensee except as follows:

(1) [(a)] The candidate;

[(b) The school of nursing from which graduated;]

(2) [(c)] Other state boards of nursing for out-of-state graduates;

(3) [(d)] Other state boards when requested for *licensure* [endorsement].

(4) National council of state boards of nursing datacenter.

Section 6. 201 KAR 20:120, Foreign reciprocity, and 201 KAR 20:130, Retaking examination, are hereby repealed.

SHARON M. WEISENBECK, Executive Director
ADOPTED: December 3, 1981
RECEIVED BY LRC: January 12, 1982 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, M.S.,R.N., 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
(Proposed Amendment)

201 KAR 20:110. *Licensure by* endorsement.

RELATES TO: KRS 314.041(4), 314.051(5)
PURSUANT TO: KRS Chapter 314
NECESSITY AND FUNCTION: To assure that licensed nurses applying for licensure in Kentucky have met equivalent standards required of graduates of Kentucky schools. To provide some security in the endorsement process.

Section 1. *Eligibility for Licensure by Endorsement.* (1) *To be eligible for licensure by endorsement, applicants shall:* [The applicant shall complete and submit the application and necessary information for licensure in Kentucky.]

(a) Hold a high school diploma or equivalent.

(b) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure.

(c) [(3) The applicant shall] Have taken a licensure examination acceptable to the [Kentucky] board [of Nursing] and shall have achieved a passing score equivalent to Kentucky requirements *as stated in 201 KAR 20:070 or as determined by board policy for applicants licensed prior to 1953.*

(d) [(2) The applicant for a Kentucky license shall] Have and submit a copy of a current active license to practice *nursing* in another state.

(e) Accurately complete and submit application form and necessary information for licensure in Kentucky.

(f) [(4) The application for licensure shall have attached] *Submit* a recent (within past six (6) months) *two (2) x three (3) inches* [passport type] photograph[. The photograph] *which* shall be signed on the front under the facial features. *Snapshots are not acceptable.*

(g) [(5)] *Submit* the current fee for a *licensure* [license shall be submitted with the] application.

(h) Have submitted by the licensing authority verification of licensure as a nurse in the United States jurisdiction of original licensure including a statement that the license is in good standing and has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority.

(i) Report any disciplinary action(s) taken on licenses by other U.S. jurisdictions.

(j) Submit official copy(ies) of court record(s) of any misdemeanor and/or felony conviction(s) with a letter of explanation.

(2) An application is valid for a period of one (1) year from date of submission to board. The applicant shall:

(a) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(b) Notify the board in writing as soon as any new address is established after submitting the application.

(3) After one (1) year from date of receipt of application, the applicant shall:

(a) Submit new application.

(b) Submit current fee.

(c) Meet requirements as stated in this section.

Section 2. Graduates of Foreign Nursing Schools. (1) All graduates of foreign nursing schools shall meet the requirements of Section 1.

(2) Graduates of foreign nursing schools who are not citizens of the United States shall submit evidence of the following:

(a) Legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor.

(b) Official transcript of nursing program.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Nursing Practice Requirements. (1) [(6)] The applicant who has been actively engaged in nursing practice for at least one (1) year during the preceding five (5) years shall submit evidence from [the] employer(s) [with the application] to verify such active practice.

(2) [(7)] The applicant who has not been actively engaged in nursing practice for at least one (1) year during the preceding five (5) years shall complete the continuing education requirements for relicensure for the current *licensure period* [year] and in addition shall complete one (1) of the following *prior to being licensed by the board*:

(a) Fifteen (15) contact hours in continuing education in nursing.

(b) A board approved refresher course.

SHARON M. WEISENBECK, Executive Director
ADOPTED: December 3, 1981
RECEIVED BY LRC: January 12, 1982 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, M.S.,R.N., Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(Proposed Amendment)

603 KAR 5:070. Truck dimension limits.

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082, 189.222(1)
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for trucks using the State Primary Road System. This regulation is adopted to fix the maximum dimensions for all classes of highways.

Section 1. The maximum dimensions for trucks using all class highways shall be as follows:

(1) Height: Including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: Including body and load, not to exceed eight (8) feet.

(3) Length:

(a) Motor truck (single unit), including any part of the body or load, not to exceed thirty-five (35) feet.

(b) Truck tractors and semi-trailers, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractors and semi-trailer units exclusively engaged in the transportation of motor vehicles the usual and ordinary bumper overhang of the transported vehicles is excluded in the measurement of the fifty-five (55) feet.

(4) A tolerance of not more than five (5) percent shall be permitted on length before a carrier is deemed to be in violation of this section.

Section 2. Unless otherwise provided herein; truck tractors, semi-trailers and trailers, or motor trucks and trailers may be operated in combinations not exceeding sixty-five (65) feet over the following highways:

(1) The Toll Road System.

(2) The Interstate Highway System.

(3) All other four (4) lane highways not a part of subsections (1) and (2) of this section.

(4) The following sections of highways not listed in subsections (1), (2) and (3) of this section:

(a) KY 15 from Campton to Whitesburg;

(b) US 23 from Ohio River Bridge at Portsmouth to Pikeville;

(c) US 25E from Pineville to Virginia State Line;

(d) US 27 from *Cynthiana* [Lexington to Nicholasville and from Stanford] to Burnside;

(e) US 31E from Glasgow to Tennessee State Line;
(f) KY 52 from Richmond to Irvine;
(g) KY 55 from Campbellsville to Columbia and from Lebanon to Springfield;
(h) US 62 from Eddyville to Paducah;
(i) US 68 from Bowling Green to Russellville;
(j) KY 90 from I-65 to Glasgow;
(k) KY 114 from Salyersville to Prestonsburg;
(l) US 119 from Pineville to Harlan;
(m) US 127 from I-71 near Glencoe to Owenton and from jct. KY 151 to Danville;
(n) US 150 from Bardstown to Springfield and from Danville to Stanford;
(o) KY 151 from I-64 to jct. with US 127;
(p) KY 245 from I-65 to US 62 at Bardstown;
(q) KY 555 from Springfield to Blue Grass Parkway.

(5) An operator will not be deemed to be in violation of this order if operating within ten (10) miles of the above roads, upon connector roads, provided the connector roads have a surface width of at least twenty (20) feet.

(6) Roads within fifteen (15) miles of the following border entry points: Ohio River Bridge, Cairo, Illinois; Ohio River Bridge, Paducah; Ohio River Bridge, Henderson; Ohio River Bridge, Owensboro; Ohio River Bridge, Milton; Ohio River Bridge, Maysville; Ohio River Bridge, South Portsmouth; Ohio River Bridge, Ashland.

Section 3. Truck tractors and semi-trailers engaged in the transportation of tobacco, unmanufactured tobacco products on motor vehicles not exceeding sixty (60) feet, excluding normal bumper overhang, may be operated upon any designated AAA or AA highway.

Section 4. As long as any highway remains a part of the state primary road system, the classification of highways by this regulation constitutes a designation by the Secretary of Transportation as contemplated by KRS 189.280, and city ordinances which impose less stringent limits shall not apply to such state maintained highways, including bridges, unless specific relinquishment of this responsibility to a city is made by the Secretary of Transportation.

FRANK R. METTS, Secretary
ADOPTED: November 4, 1981
RECEIVED BY LRC: December 17, 1981 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, Department of Transportation, Frankfort, Kentucky 40622.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(Proposed Amendment)

603 KAR 5:096. Highway classifications.

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082, 174.050, 189.222
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight and dimension limits on all highways included in the State Primary Road System. This regulation is adopted to identify those portions of the highway system affected and indicate their classification.

Section 1. The weight and dimension limits set forth in 603 KAR 5:066 and 603 KAR 5:070 for truckway classifications shall apply on all highways in the State Primary Road System as indicated herewithin, unless bridge postings prohibit such weights on any particular segment.

Section 2. The maximum weight limits for the three (3) classifications of highways are as follows: "AAA" System, 80,000 pounds gross weight; "AA" System, 62,000 pounds gross weight; "A" System, 44,000 pounds gross weight. There shall be no tolerances allowed on gross weight, axle weight, or combinations of axle weights on the Interstate [and National Defense Highway] System only.

Section 3. The classifications for each highway* in the State Primary Road system are as follows:

KY 670
AAA—From jct. KY 109, nw of Providence, to jct. US 41A in Providence (Webster Co.)

* COMPILER'S NOTE: Only those particular highways affected by the proposed amendment are shown here. 603 KAR 5:096 is printed in full in Volume 3, "Kentucky Administrative Regulations Service."

FRANK R. METTS, Secretary
ADOPTED: November 4, 1981
RECEIVED BY LRC: December 17, 1981 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, Department of Transportation, Frankfort, Kentucky 40622.

Proposed Regulations

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System

102 KAR 1:190. Types of investments.

RELATES TO: KRS 161.430
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.430(5)(e) provides that the board of trustees may establish regulations that identify additional types of investment in which the assets of the system may be invested. This regulation sets out the types of investments that will be permitted.

Section 1. In addition to the limitations of KRS 161.430(5)(d), no more than five percent (5%) of the assets of the system may be invested in real estate, real estate lease agreements, real estate joint ventures, or first mortgages on real estate.

PAT N. MILLER, Executive Secretary
ADOPTED: December 21, 1981
RECEIVED BY LRC: January 13, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System

102 KAR 1:195. Payroll reports.

RELATES TO: KRS 161.560
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.560 provides that employers shall submit such payroll reports, contribution lists, and other data as may be required by regulation of the board of trustees. This regulation sets out the procedures to be followed by employers in forwarding payroll reports to the system.

Section 1. Employers shall submit a complete report of all member contributions to the Retirement System at the close of each fiscal year. Such reports must be received by the Teachers' Retirement System no later than July 20 of each year. The Teachers' Retirement System shall determine the types of information required on the reports.

Section 2. Employers shall provide to the system, upon request, information relating to the dates that the members are paid and other information related to the payroll deduction of member contributions to the system.

Section 3. The Retirement System may require special reports of all member contributions to the Retirement System at such times that it is deemed necessary and in the best interest of the Retirement System.

PAT N. MILLER, Executive Secretary
ADOPTED: December 21, 1981
RECEIVED BY LRC: January 13, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Real Estate Commission

201 KAR 11:016. Repeal of 201 KAR 11:015.

RELATES TO: KRS 324.045
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: The Commission is of the opinion that no restrictions should be placed on the taking of an examination by one who previously failed such examination. The original regulation was needed for administrative purposes, but with a larger staff and computers such regulation is no longer needed.

Section 1. 201 KAR 11:015, Re-examination after failure, is hereby repealed.

JACK H. NEELY, Chairman
ADOPTED: December 10, 1981
RECEIVED BY LRC: December 17, 1981 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to the Kentucky Real Estate Commission, 100 East Liberty Street, Suite 204, Louisville, Kentucky 40202.

DEPARTMENT OF ENERGY AND AGRICULTURE
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070
PURSUANT TO: KRS 13.082, 257.030
NECESSITY AND FUNCTION: To establish a technique for treatment of mares imported into Kentucky from any country outside the continental United States, its territories and possessions.

Section 1. As used in this regulation, unless the context clearly requires otherwise:
(1) "Mare" means a female horse over 731 days of age.
(2) "Breeding" means natural or artificial insemination of a mare.
(3) "CF test" means a complement-fixation test on

equine serum for the detection of specific antibodies of CFM bacterium.

(4) "Set of cultures" means a culture from the clitoral sinus (if intact), clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Any mare imported into Kentucky from any country outside the continental United States, its territories and possessions, shall, before being used for breeding, be treated by or under the direct supervision of a veterinarian licensed to practice in Kentucky, according to the following procedure:

(1) For five (5) consecutive days the veterinarian shall aseptically clean and wash external genitalia, vaginal vestibule and clitoral fossa with a solution of not less than two (2) percent chlorhexidine in a detergent base, and then coat the external genitalia and vaginal vestibule with an ointment of not less than two-tenths (0.2) percent nitrofurozone insuring that the clitoral fossa is filled.

(2) After the treatment, the mare shall undergo a seven (7) day rest period.

(3) Non-pregnant mares. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. He shall also collect one (1) additional sample from the endometrium of the uterus during estrus. All samples shall be submitted to a state or federal laboratory.

(4) Pregnant mares. These mares must remain on a state approved premise until all tests results are complete on both mare and foal. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. Seven (7) days after foaling, the veterinarian shall collect one (1) specimen from the endometrium of the uterus of the mare and one (1) specimen from the foal. If the foal is female, the specimen is to be collected from the vaginal vestibule; and, if a male, the specimen shall be collected from the prepuce. Each of these specimens shall be submitted to a state or federal laboratory for culture.

(5) If positive, the mare must remain under quarantine until three (3) additional specimens from the clitoral fossa are collected by an accredited veterinarian at intervals of not less than seven (7) days. The first set not to be collected less than one (1) year from the last positive and an additional specimen from the endometrium of the uterus during estrus is required.

(6) All mares entering Kentucky for quarantine and testing procedures must remain in the state for breeding and results of the post-breeding CF test, which shall be taken fifteen (15) to forty (40) days after the mare is bred.

Section 3. This regulation shall also apply to: (1) Any mare imported into Kentucky for breeding which has at any time been present in any country outside the continental United States, its territories and possessions, for any purpose other than racing.

(2) Any imported mare, whether used for breeding or not, which is or will be present on a breeding facility or establishment after entering Kentucky.

ALBEN W. BARKLEY II, Commissioner
ADOPTED: December 14, 1981
RECEIVED BY LRC: January 7, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alben Barkley II, Chairman, State Board of Agriculture, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT OF ENERGY AND AGRICUTURE
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:120. Treatment of imported stallions.

RELATES TO: KRS 257.030
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To establish a technique for treatment of stallions imported into Kentucky from any country outside the continental United States, its territories and possessions.

Section 1. As used in this regulation, unless the context clearly requires otherwise:

(1) "Stallion" means a male horse other than gelding over 731 days of age.

(2) "Breeding" means natural or artificial insemination of a mare.

(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies of CEM bacterium.

(4) "Set of cultures" means a culture from the clitoral sinus, clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Any stallion imported into Kentucky from any country outside the continental United States, its territories and possessions, shall, before being used for breeding, be treated by or under the direct supervision of a veterinarian licensed to practice in Kentucky, according to the following procedure:

(1) With the stallion in full erection and while wearing disposable gloves and using disposable equipment:

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and penetration of the folds of the sheath.

(c) Wash with clean warm water and dry.

(d) Apply an ointment containing not less than two-tenths (0.2) percent nitrofurazone liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.

(2) Repeat the treatment daily for five (5) consecutive days.

(3) After treatment procedure, the stallion must undergo a seven (7) day rest period.

(4) The stallion must breed two (2) mares that have been qualified as free of CEM by negative culture of two (2) sets of specimens collected at intervals of not less than seven (7) days and a CF test. The first set of cultures and the blood sample for the CF test must be taken at the time of estrus.

(5) The first two (2) mares bred by a stallion which has been treated as outlined in subsection (1) of this section shall be cultured from the cervix, clitoral fossa and clitoral sinuses on the second, fourth and seventh day after breeding. During the next estrus, specimens for culture shall be collected from the endometrium of the uterus, clitoral sinuses and clitoral fossa. The two (2) blood samples for the CF test shall be obtained at intervals of not less than seven (7) days and between the fifteenth and fortieth day after breeding. All tests and cultures required by this section shall be conducted at the National Veterinary Services Laboratory at Ames, Iowa. If all cultures and tests

are negative, the treated stallion may be placed in service for breeding.

Section 3. This regulation shall also apply to: (1) Any stallion imported into Kentucky for breeding which has at any time been present in any country outside the continental United States, its territories and possessions, for any purpose other than racing.

(2) Any imported stallion, whether used for breeding or not, which is or will be present on a breeding facility or establishment after entering Kentucky.

ALBEN W. BARKLEY II, Commissioner
ADOPTED: December 14, 1981
RECEIVED BY LRC: January 7, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alben W. Barkley II, Chairman, State Board of Agriculture, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.310(2)
NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas:

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Parties and intervention. In any formal proceeding, any corporation, association, body politic or person authorized by law to become a party to a proceeding before the commission, may by timely motion request that he or it be granted leave to intervene. The motion shall set forth the grounds for the request, including the status and interest of the movant. If the commission, after opportunity has been given to the party or parties to such proceeding to be heard on such intervention, be of the opinion that the movant is entitled to be made a party, it shall so order. Leave thus granted will entitle the intervenor to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses and to be heard in person or by counsel in the proceeding.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared

by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be worded for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part only of any document may be made, at the instance of any party, a part of the record before such court.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original

liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 8. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation. (See Section 7(3).)

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 7 of this regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 9. Application or Notice for Authority to Adjust Rates. (1) When the utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 7 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:

(a) Financial exhibit. (See Section 6.)

(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and the changes which it is desired to make, shown in comparative form.

(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.

(d) A statement in full of the reason why the adjustment is required.

(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.

(f) A statement certifying that the utility's annual reports, including the report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1).

(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) above, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:

(a) Total amount of interest charged to construction.

(b) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.

(c) Details of any apportionment used.

(d) Monthly revenues and operating expenses.

Section 10. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 7 of this regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit. (See Section 6.)

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 11. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired. (See Section 14(1).)

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint:

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or persom complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also

a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground. (See Section 14(2).)

Section 12. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 13. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 14. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

(a) Formal complaint.
(b) Answer.
(c) Application.
(d) Notice of adjustment of rates.

(2) Forms of formal complaint.

Before the Public Service Commission

(Insert name of complainant) Complainant	)	
	)	No. _____
vs.	)	(To be inserted by the secretary)
(Insert name of each defendant) Defendant	)	

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of _____, 19____.

_____
(Name of each complainant)

_____
(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

(Insert name of complainant) Complainant	)	
	)	No. _____
vs.	)	(To be inserted by the secretary)
(Insert name of each defendant) Defendant	)	

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

(a) That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

_____
(Name of defendant)

_____
(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

In the matter of the application of (here insert name of each applicant) for (here insert desired order, authorization, permission or certificate, thus: "Order authorizing issue of stocks and bonds")	)	No. _____ (To be inserted by the secretary)

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additionasl facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____, 19_____.

_____
(Name of applicant)

_____
(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

In the matter of adjustment of rates of the (state name of corporation).	)	No. (To be inserted by the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19_____, in conformity with the attached schedule.

(See Section 9 of this regulation for required information.)

_____
(Name and address of company)

_____
(Name and address of attorney)

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities.

Section 1. General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of this state.

(2) Whenever standards or codes are referred to in the commission's regulations it is understood that utilities employing competent corps of engineers are not to be prohibited thereby from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 2. Definitions. In addition to the definitions as set out in KRS 278.010, the following definitions shall be used in interpreting the commission's regulations:

(1) "Commission" means the Public Service Commission.

(2) "Utility" means an energy utility as defined in KRS 278.010(4) or a combined energy-non-energy utility as provided in KRS 278.040(2).

(3) "Combined energy-non-energy utility" means a utility which is an energy utility that also renders service as a non-energy utility as provided in KRS 278.040(2).

(4) "Customer" means any person, firm, corporation or body politic supplied service by any electric, gas or combined energy-non-energy utility.

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. Said report shall be based upon the accounts set up in conformity with the commission's order adopting uniform classification of accounts for utilities. This report shall be filed on or before March 31, each year. For good cause shown, the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every utility shall make periodical reports on such forms as may be prescribed, of meter tests, number of customers and amount of refunds.

(3) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(4) All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified herein.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of the type, class and character of service that is available to him at his location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with the regulations of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

Section 6. Meter Readings and Information. (1) Information on bills. Each bill rendered periodically by utilities shall show the class of service, the present and last preceding meter readings, the date of the present reading, the number of units consumed, the meter constant, if any, the net amount for service rendered, all taxes, the adjustments, if any, and the gross amount of the bill. The date after which a penalty may apply to the gross amount must be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing rate schedule on the bill.

(b) By publishing in a newspaper of general circulation once each year or when rate is changed.

(c) By mailing to each customer once each year or when rate is changed.

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates and furnishing same by return first class mail.

(2) Meter readings. The registration of each meter shall read in the same units as used for billing unless a conversion factor be shown on the billing forms and if the meter does not read direct, the constant shall be plainly marked on the face of the meter dial.

(3) Flat rates. Flat rates for unmetered service shall approximate as close as possible the utility's rates for metered service and the rate schedule shall clearly set out the basis upon which consumption is estimated.

(4) Utilities now using or desiring to adopt mechanical billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements. Each utility shall submit the form of bill to be used by it to the commission for its approval.

Section 7. Deposits. (1) A utility may require from any customer or applicant for service a minimum cash deposit or other guaranty to secure payment of bills of an amount not to exceed two-twelfths (2/12) of the estimated annual bill of such customer or applicant, where bills are rendered monthly or an amount not to exceed three-twelfths (3/12) of the estimated annual bill of such customer or applicant, where bills are rendered bimonthly or an amount not to exceed four-twelfths (4/12) of the estimated bill of such customer or applicant where bills are rendered quarterly.

(2) The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deposit.

Section 8. Complaints. Upon complaint to the utility by a customer either at its office or in writing, the utility shall make a prompt and complete investigation and advise the complainant thereof. It shall keep a record of all such complaints concerning its utility service which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof.

Section 9. Bill Adjustment. (1) Whenever a meter in service is found upon periodic request or complaint test to be more than two percent (2%) fast, additional tests shall be made at once to determine the average error of the meter. Said tests shall be made in accordance with the commission's regulation applicable to the type of meter involved.

(2) If the result of tests on a customer's meter shows an average error greater than two percent (2%) fast, then the customer's bills, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months. (See exception in subsection (5) of this section.)

(3) If the result of tests on a customer's meter shows an average error greater than two percent (2%) slow, then the customer's bill, for the period during which the meter error is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.

(4) It shall be understood that when a meter is found to have an error in excess of two percent (2%) fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100 percent as is commercially practicable. Therefore, percent error shall be that amount of error as is indicated by the test.

(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has overrun to the extent that one-half (½) of the time elapsed since the last previous test exceeds twelve (12) months, the refund shall be for the twelve (12) months as specified in subsection (2) of this section and in addition thereto, a like refund for those months exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.

(6) Each utility shall make a reasonable attempt to determine if the amount of consumption for the current billing period for each customer is unduly excessive. If a comparison of consumption indicates a necessity therefor, a test of the customer's meter shall be made, and if the meter is found to register incorrectly to the customer's prejudice more than two percent (2%), the utility shall recalculate the customer's bills in accordance with the foregoing provisions.

(7) When a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On_____, 19____, the meter bearing identification No._____installed in your building located at_____
(Street and Number)
in_____was tested
(City)
at_____and found to
(On premises or elsewhere)
register_____.
(Percent fast or slow)
The meter was tested on_____
(Periodic, Request, Complaint)
test.

Based upon this we herewith_____
(Charge or Credit)
you with the sum of $_____, which amount has been noted on your regular bill.

Section 10. Customer's Discontinuance of Service. (1) Any customer desiring service discontinued or changed from one address to another shall give the utility three (3) days' notice in person or in writing, provided such notice does not violate contractual obligations.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant an amount not to exceed the actual average cost as approved by this commission of making such reconnection.

(3) Any utility desiring to establish a reconnection charge under the provisions of subsection (2) above, shall submit for commission approval a formal application setting out:

(a) The actual average cost of making such reconnections; and

(b) The effect of such charges on the utility's revenues.

Section 11. Discontinuance of Service. (1) The utility may refuse or discontinue to serve an applicant or customer under the following conditions:

(a) For noncompliance with its rules and regulations. However, no utility shall discontinue or refuse service to any customer or applicant for violation of its rules or regulations without first having made a reasonable effort to induce the customer or applicant to comply with its rules and regulations as filed with the commission. After such effort on the part of the utility, service may be discontinued or refused only after the customer shall have been given at least ten (10) days written notice of such intention, mailed to his last known address.

(b) When a dangerous condition is found to exist on the customer's or applicant's premises, the service shall be cut off without notice or refused, provided that the utility notify the customer or applicant immediately of the reasons for the discontinuance or refusal and the corrective action to be taken by the applicant or customer before service can be restored.

(c) When a customer or applicant refuses or neglects to provide reasonable access to the premises for the purpose of installation, operation, meter reading, maintenance or removal of utility property the utility may discontinue or refuse service only after the customer or applicant shall have been given at least fifteen (15) days' written notice of such intention.

(d) A utility shall not be required to furnish service to any applicant when such applicant is indebted to the utility for service furnished until such applicant shall have paid such indebtedness.

(e) A utility may refuse or discontinue service to a customer or applicant if the customer or applicant does not comply with state, municipal or other codes, rules and regulations applying to such service.

(2) A gas or electric utility may discontinue service under the following conditions:

(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least ten (10) days' written notice, but the cut-off shall not be effected before twenty-seven (27) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office, or to its employee empowered to discontinue service, payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until thirty (30) days elapse from the time of the utility's notification to the customer in writing of the existence of local, state and federal programs, providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. Service shall not be discontinued where the customer and the utility have reached agreement on a parital payment plan pursuant to paragraph (b) herein. The written notice for any discontinuance of service shall advise the customer of his rights under paragraphs (a) and (b) herein and of his right to dispute the reasons for such discontinuance.

(b) Every gas and electric utility subject to the jurisdiction of the commission shall have an employee available during regular working hours to answer questions regarding a customer's bill and to resolve disputes over the amount of such bill. Such employee shall be authorized to negotiate partial payment plans of an outstanding bill and accept payments where the customer has shown good faith in attempting to meet his financial obligations to the utility. Said employee shall be authorized by the utility to consider and shall consider proposals by the customer for a partial payment plan and retention of service. Each jurisdictional gas and electric utility shall develop a budget payment plan whereby a customer may elect to pay a fixed amount each month on a yearly basis in lieu of monthly billings based on actual usage. The provisions of this section relating to partial payments and budget plans shall apply only to a utility's residential customers. It shall be the responsibility of the utility to disseminate information to its customers regarding the availability of such budget payment plan. If the commission finds, upon application a budget plan for residential customers would materially impair or damage the utility's credit or operations, then it may grant the utility an exemption from the requirements of the budget plan. No exemption may extend beyond one (1) year without another application by the utility and a finding by the commission that said exemption should be allowed.

(c) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued upon forty-eight (48) hours' written notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(3) A water, sewage or telephone utility may discontinue service under the following conditions:

(a) For nonpayment of bills. However, no utility shall

discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until ten (10) days elapse from the time of the utility's notification.

(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(4) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to such customer until all defects in the customer-owned portion of the service, if any, shall have been corrected.

(5) Reconnection. For all cases of refusal or discontinuance of service as herein defined, where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.

(6) When advance notice is required, such notice may be given by the utility by mailing by United States mail, postage prepaid, to the last known address of the applicant or customer.

Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:

(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.

(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.

(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's rules and regulations. This charge may include the cost of disconnecting the service.

(2) The charges, however, shall be applied uniformly throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.

Section 13. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:021, 807 KAR 5:041 and 807 KAR 5:066.

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for such purpose. Each utility having tests made by another agency or utility shall notify the commission of said arrangements in detail to include make, type and serial number of standards used to make said checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless it has been calibrated by the commission's Meter Standards Laboratory. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring calibration by the commission.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ metermen certified by this commission. These certified metermen shall perform such tests as may be necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by the regulations of the commission.

(5) A utility or agency desiring to have its employees certified as metermen shall submit the names on the commission's form entitled "Application for Appointment of Metermen" and after compliance with the requirements as noted in this form, the applicant may be certified as a meterman and furnished with a card authorizing him to perform meter tests.

Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or carry on his person a badge or other identification which will identify him as an employee of the utility, the same to be shown by him upon request.

Section 15. Meter Test Records. (1)(a) Test cards. A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meterman. Such record shall include: Information to identify the unit and its location; the date of tests; the reason for such tests; readings before and after the test; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations employed; indications showing that all required checks have been made; a statement of repairs made, if any; the identifying number of the meter; the type and capacity of the meter; and the constant of the meter.

(b) The complete record of tests of each meter shall be continuous at least two (2) periodic tests and in no case less than two (2) years.

(2) (a) History cards. Each utility shall keep numerically

arranged and properly classified card records giving for each meter owned and used by the utility for any purpose the identification number, date of purchase, name of manufacturer, serial number, type, rating, and the name and address of each customer on whose premises the meter has been in service with date of installation and removal. These card records shall also give condensed information concerning all tests and adjustments including dates and general results of such adjustments. The card records shall be of such character that a system can be used that will record the date of the last test and indicate the proper date for the next periodic test required by the applicable regulation of the commission.

(b) When the records required above are kept in a readily available form posting to the history card is not necessary.

(3) Sealing of meters. Upon completion of adjustment and test of any meter under the provisions of the regulations of the commission, the utility shall affix thereto a suitable seal in such a manner that adjustments or registration of the meter cannot be tampered with without breaking the seal. The seal shall be of a type acceptable to the commission.

Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.

(3) When utilities' structures are located outside of a built-up community only every tenth structure need be so marked.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.

(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.

Section 17. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) The date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 18. Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice and at all reasonable hours.

Section 19. Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two percent (2%) fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.

Section 20. Complaint Tests. (1) Any customer of the utility may request a meter test by written application to the commission accompanied by payment of such fee for the test as prescribed below. Such request may not be made more frequently than once each twelve (12) months. Upon receipt of such request, the commission will notify the utility to leave the customer's meter in place until completion of such test.

(2) If a meter tested upon complaint of a customer is found to register not more than two percent (2%) fast, the cost of such test shall be borne by the customer. However, if the meter shall be found to register more than two percent (2%) fast, the cost of such test shall be borne by the utility and the amount of the deposit made by the customer shall be refunded.

(3) The charges fixed by the commission for making such tests are as follows:

(a) Electric. Direct current and single phase alternating current watt hour meters operating on circuits of not more than 250 volts:

Amperes Rated Capacity	Fee
30 and under	$ 2
Over 30 to 100	4
Each additional 50 amperes or factor thereof	1

Polyphase a.c. watt hour meters and single phase or direct current watt hour meters operating on circuits of over 250 volts with or without instrument transformers:

Kilowatts Rated Capacity	Fee
5 KW and under	$ 2
Over 5 to 25	4
Over 25 to 100	8
Over 100 to 500	16

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(b) Gas. Displacement type meters operating on distribution system pressures:

Capacity in Cu. Ft. Per Hour	Fee
1,000 cu. ft. per hour and under	$ 4
Over 1,000 to 10,000	8
Over 10,000 to 100,000	12

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(c) Water:

Size	Fee
Outlet 1 inch or less	$ 4
Outlet over 1 inch to 2 inches	6
Outlet over 2 inch to 3 inches	8
Outlet over 3 inch to 4 inches	10

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(d) For meters of a size or capacity not shown herein, the commission will fix a suitable fee upon application.

Section 21. Safety Program. Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program shall:

(1) Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 22. Inspection of Systems. (1) Each utility shall adopt procedures for inspection to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission.

(2) Each electric utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

(a) At intervals not to exceed six (6) months:

1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.

2. Unmanned production facilities including peaking units not on standby status; units shall be operated and inspected and all monitoring devices shall be checked to determine that there is no evidence of abnormality.

3. Substations where the primary voltage is sixty-nine (69) KV or greater; examination for the purpose of discovering damage to or deterioration of components including structures and fences; checking of all gauges and monitoring devices.

4. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, examination for leaks, condition of case, connections, temperature and overloading.

5. Electric lines operating at sixty-nine (69) KV or greater (including insulators, conductors, and supporting facilities).

(b) At intervals not to exceed one (1) year:

1. Production facilities maintained on a standby status; also inspection and examination prior to any start up, except remotely controlled facilities.

2. Substations where the primary voltage is less than sixty-nine (69) KV but is fifteen (15) KV or greater.

(c) At intervals not to exceed two (2) years: Electric lines operating at voltages of less than sixty-nine (69) KV (including insulators, conductors and supporting facilities).

(d) Other facilities:

1. Utility buildings inspected for compliance with safety codes at intervals not greater than one (1) year.

2. Construction equipment inspected for defects, wear and operational hazards at intervals not greater than quarterly.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.

2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(3) Each gas utility shall make systematic inspections of its system for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is prescribed or recommended by the Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities as defined in said standards, in accordance with the inspection procedures described therein.

(4) The following maximum time intervals are prescribed for: certain inspections provided for in Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified; and certain additional inspections not provided for in such code.

(a) At intervals not to exceed one (1) year:

1. Production wells, storage wells and well equipment; visual inspection and examination of all exterior components.

2. Pressure limiting stations, relief devices and pressure regulating stations, including vaults.

3. The curb box on service shall be inspected for accessibility.

(b) Other facilities:

1. Utility buildings inspected for compliance with safety codes at least annually.

2. Construction equipment inspected for defects, wear and operational hazards at least quarterly.

(c) At intervals not to exceed the periodic meter test intervals: individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(d) At intervals of meter change: the curb box on service shall be inspected for operable condition.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.

2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(5) (a) Each water utility shall make systematic inspec-

tions of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Source of supply:
a. Dams, physical and structural, annually.
b. Intake structures, physical and structural, annually.
c. Traveling screens, physical and structural and safety of operation, annually.
2. Purification:
a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.
b. Chemical feed equipment, for proper and safe operation, annually.
c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.
d. Hydrants, for proper and safe operation, annually.
e. Utility buildings, inspection for compliance with safety codes, annually.
f. Construction equipment, inspection for defects, wear and operational hazards, quarterly.
g. Mains and valves, leaks, annually.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(6) (a) Each telephone utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Aerial plant: Inspection for electrical hazards, proper clearance for electric facilities and climbing safety—Every two (2) years.
2. Underground plant: Inspection for presence of gas, proper clearance from electric facilities and safe working conditions—At least annually.
3. Station equipment and connections: Inspection for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring—When on customer's premises.
4. Utility buildings: Inspection for compliance with safety codes—At least annually.
5. Construction equipment: Inspection for defects, wear and operational hazards—At least quarterly.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

Section 23. Reporting of Accidents. Each utility shall notify the commission of any accident which results in death or serious injury to any person or substantial property damage. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph.

Section 24. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:011. Tariffs.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.160(1)
NECESSITY AND FUNCTION: KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

Section 1. Definitions. For purpose of this regulation: "Commission" means the Public Service Commission.

Section 2. General. All utilities under the jurisdiction of the commission shall file with the secretary two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and regulations, the utilities office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.

Section 3. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.

(2) The pages of a tariff shall be eight and one-half by eleven (8½ by 11) inches in size.

(3) Utilities shall publish tariffs in loose-leaf form using one (1) side of the paper only, with not more than one (1) schedule to the page.

(4) The front cover page of a tariff shall contain the following:

(a) Name of the utility and location of principal office.
(b) Statement of kind of service offered.
(c) General statement of territory served.
(d) Date of issue and date tariff is to become effective.
(e) Signature of the officer of the utility authorized to issue tariffs.
(f) Identifying designation in the upper right-hand corner as required by Section 5 of this regulation.

(5) The second and succeeding pages shall contain:
(a) All the rules and regulations of the utility.
(b) Rate schedules showing all rates and charges for the several classes of service.
(c) Signature of the officer of the utility authorized to issue tariffs.
(d) Date of issue and date tariff is to become effective.
(e) Identifying designation in upper right-hand corner as required by Section 5 of this regulation.
(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:
(a) Applicable: Show territory covered by tariff.
(b) Availability of service: Show classes of customers affected, such as domestic, commercial, etc.
(c) Rates: List all rates covered by tariff.
(d) Minimum charge: State amount of charge and quantity allowed.
(e) Delayed payment charge: State if penalty or discount.
(f) Term: If contracts are made for certain periods, give length of term.
(g) Special rules: If any special rules and regulations are in effect covering this tariff, list same hereunder.
(7) The secretary of the commission will furnish standard forms of tariffs on request.

Section 4. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of _____, or see Tariff Sheet No. 2B for applicability.)
(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)
(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)
(4) (a) Each page of the tariff shall bear the Commission Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper right-hand corner, a further designation, such as "Original Sheet No. 1," "Original Sheet No. 2," etc.
(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.
(c) Tariffs may be further divided into sections, and so designated if required by their size and contents.
(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.

Section 5. Designation of Tariffs. All tariffs must bear in the upper right-hand corner of the front cover page the commission number thereof. Subsequent tariffs filed as provided by Sections 6 and 9 of this regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the commission number of the tariff cancelled, changed or modified by it.

Section 6. Change or Withdrawal of Rate Schedules Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this regulation.
(2) (a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:
(C) To signify changed regulation.
(D) To signify discontinued rate, regulation or test.
(I) To signify increase.
(N) To signify new rate and/or new test.
(R) To signify reduction.
(T) To signify a change in text.
(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.
(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.
(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:
(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this regulation.
(b) By issuing and filing on at least twenty (20) days notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this regulation.
(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this regulation. Such revisions must be identified as required herein.

Section 7. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No. _____ dated _____, 19_____."

Section 8. Notices. Notices shall be given by the utility in the following manner:
(a) Advance notice, abbreviated newspaper notice. Utilities with gross revenues greater than $1,000,000 shall notify the Commission in writing of Intent to File Rate Application at least four (4) weeks prior to filing. At or about this time application may be made to the Commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from applicant of the full schedule of increases or rate changes.

(b) Notice to customers of proposed rate changes. If the applicant has twenty (20) or fewer customers, typewritten notice of the proposed rate changes and the estimated amount of increase per customer class shall be placed in the mail to each customer no later than the date on which the application is filed with the Commission and, in addition, a sheet shall be posted at its place of business containing such information. Except for sewer utilities which must give a notice by mail to all of its customers pursuant to KRS 278.185, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at its place of business and, in addition, notice thereof:

1. Shall be included with customer billings made on or before the application is filed with the Commission;
2. Shall be published by such date in a trade publication or newsletter going to all customers; or
3. Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made prior to the filing of the application with the Commission. Each such notice shall contain the following language:

The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice.

(c) Notice as to intervention. The notice made in compliance with subsection (b) above shall include a statement to the effect:

1. That any corporation, association, body politic or person may by motion within thirty (30) days after receiving notice of the proposed rate changes request leave to intervene;
2. That the motion shall be submitted to the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the request including the status and interest of the party; and
3. That copies of the application and testimony may be obtained by contacting the applicant at a name and address to be stated in the notice.

(d) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by methods mentioned in paragraph (b)1 and 2 above and if the notice contains a clear and concise explanation of the proposed change in the rate schedule applicable to each customer, no notice under Section 2 of 807 KAR 5:051 shall be required. Otherwise, such notice shall be given.

(e) Notice of hearing. Where notice pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.

(f) Extensions of time. Applications for extensions of time shall be made to the Commission in writing and will be granted only upon a showing of compelling reason.

Section 9. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and regulations under KRS 278.190.

(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any proposed revisions in rates or regulations, and the twenty (20) days statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed.

Section 10. Change of Ownership; Adoption Notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.

(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.

(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with Public Service Commission Adoption Notice No. 1.

(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the Commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 5 of this regulation with proper identifying designation. (Example: Public Service Commission No. 1 cancels Public Service Commission Adoption Notice No. 1.)

(5) Within ten (10) days after the filing of an adoption notice, as required by subsection (2) of this section, by a public utility which then had other tariffs on file with the commission said utility shall issue and file in its own name rate schedules and regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and regulations of the predecessor utility then in effect and adopted by it, or such other rates and regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, Public Service Commission, No. 11, cancels Original Sheet No. 2A, also cancels Public Service Commission Adoption Notice No. 6; or Public Service Commission No. 12 cancels Public Service Commission No. 11, also cancels Public Service Commission Adoption Notice No. 6.)

(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and regulations of the predecessor utility, such tariff or revision shall be subject to Sections 9 and 10 of this regulation.

Section 11. Posting Tariffs, Regulations and Statutes. Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:

(1) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.

(2) Copies of the Kentucky Revised Statutes applicable to the utility.

(3) A copy of the regulations governing such utility adopted by the commission.

(4) A suitable placard, in large type, giving information to the public that said tariffs, rules and regulations and statutes are kept there for public inspection.

Section 12. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation applicable to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

Section 13. Deviations from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

Section 14. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:

(1) Form of cover sheet for tariffs.
(2) Form for filing rules and regulations.
(3) Form for filing rate schedules.
(4) Form of certificate of notice to the public of change in tariff where no increase of charges results.
(5) Form of certificate of notice to the public of change in tariff which results in increased charges.
(6) Form of adoption notice.

FORM OF COVER SHEET FOR TARIFFS

P.S.C. NO. ___

CANCELS P.S.C. NO. ___

(NAME OF COMPANY)

of

(LOCATION OF COMPANY)

Rates, Rules and Regulations for Furnishing

(SERVICE RENDERED)

at

(LOCATION SERVED)

FILED WITH PUBLIC SERVICE COMMISSION
OF KENTUCKY

Issued _____, 19 __ Effective _____, 19 __

Issued by _____
(Name of Utility)

By _____

_____

FORM FOR FILING RULES & REGULATIONS

(Page 2 of Tariff)

_____

_____

Name of Utility

RULES & REGULATIONS

Date of Issue Effective Date

Issued by

Name Title

FORM FOR FILING RATE SCHEDULES

(Page 3 of Tariff)

For _____
Community, Town or City

P.S.C. NO. ____

____ (Original) Sheet No. ____
(Revised)

Name of Issuing Corporation

Cancelling P.S.C. No. ____

____ (Original) Sheet No. ____
(Revised)

CLASSIFICATION OF SERVICE

APPLICABLE: (Show territory covered by tariff.)

AVAILABILITY OF SERVICE: (Show classes of customers affected, such as domestic, commercial, etc.)

RATES: (List all rates covered by tariff.)

MINIMUM CHARGE: (State if penalty or discount.)

DATE OF ISSUE _____
Month Day Year

DATE EFFECTIVE _____
Month Day Year

ISSUED BY _____
Name of Officer Title Address

ISSUED BY AUTHORITY OF P.S.C.

ORDER NO. _____

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC OF CHANGE IN TARIFF WHERE NO INCREASE OF CHARGES RESULTS

(2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am _____ of the (Name of Utility) _____ a utility furnishing (Kind of Service) _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19 _____, issued *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____, to become effective _____, 19_____, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said Regulation, as follows:

On the _____ day of _____, 19_____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said Regulation.

I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges to any customer.

Given under my hand this _____ day of _____, 19_____.

Address _____

* If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or regulations, the filing should be described as _____ Revision of Original Sheet No. _____ P.S.C. No. _____, cancelling _____ Original Sheet No. _____, P.S.C. No. _____, cancelling P.S.C. Adoption Notice No. _____.

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC OF CHANGE IN TARIFF WHICH RESULTS IN INCREASED RATES

(2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective ___ .) I hereby certify that I am (Title of Officer) ___ of the (Name of Utility) _____ a utility furnishing _____ service within the Commonwealth of Kentucky, which on _____ day of _____, 19_____, issued its *Tariff P.S.C. No. _____ canceling Tariff P.S.C. No. _____ to become effective _____, 19_, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said Regulation, as follows:

On the _____ day of _____, 19_____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said Regulation.

**On the _____ day of _____, 19_____, typewritten or printed notice of the proposed rates or regulations was mailed to each of the _____ customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.

Given under my hand this _____ day of _____, 19_____.

Address _____

*If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or regulations, the filing should be described as Revision of Original Sheet No. _____ P.S.C. No. _____, or Original Sheet No. _____ P.S.C. No. _____ cancelling P.S.C. Adoption Notice No. _____.

**If Notice is given by publication as provided in Section 8, use the following:

That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the _____ day of _____, 19_____, there was delivered to the _____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior the effective date of said change, a notice of the proposed rates or regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 9(2), of said Regulation.

FORM OF ADOPTION NOTICE
P.S.C. Adoption Notice No. _____
ADOPTION NOTICE

The undersigned (Name of Utility) _____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements

containing rates, rules and regulations for furnishing (Nature of Service) _____ service at _____ in the Commonwealth of Kentucky, filed with the Public Service Commission by (Name of Predecessor) _____ of _____, and in effect on the _____ day of _____, 19_____, the date on which the public service business of the said (Name of Predecessor) _____ was taken over by it.

This notice is issued on the _____ day of _____, 19 _____, in conformity with Section 10 of P.S.C. Tariff Regulations adopted by the Public Service Commission.

_____

By _____

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:016. Advertising.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.040, 278.190(3)
NECESSITY AND FUNCTION: KRS 278.190(3) provides that at any hearing involving a rate or charge of a utility for which an increase is sought, the burden of proof shall be on the utility to show that the increased charge or rate is just and reasonable. This regulation specifies what advertising expenses of a utility will be allowable as a cost to the utility for ratemaking purposes.

Section 1. General. The purpose of this regulation is to insure that no direct or indirect expenditures may be includable in a gas or electric utility's cost of service for ratemaking purposes which are for promotional advertising, political advertising or institutional advertising. It is also the purpose of the regulation to insure that no direct or indirect expenditures may be includable in a telephone, water, or sewage utility's cost of service for ratemaking purposes which are for political advertising or institutional advertising. "Advertising" means the commercial use of any media, including newspaper, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to utility consumers.

Section 2. Advertising Allowed. (1) No advertising expenditure of a utility shall be taken into consideration by the commission for the purpose of establishing rates unless such advertising will produce a material benefit for the ratepayers.

(2) As used in this regulation, advertising expenditures shall include costs of advertising directly incurred by the public utility and those costs of advertising incurred by contribution to third parties, including parent and affiliated companies.

Section 3. Material Benefit. (1) Advertising expenditures by gas or electric utilities which produce a "material benefit" include, but are not limited to the following:

(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;

(b) Advertising conveying safety information in the direct use of utility equipment;

(c) Advertising which furnishes factual and objective data programs to educational institutions on the subject of energy technology;

(d) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;

(e) Legal advertising notices to ratepayers required by statute, rule or order of the commission.

(f) Advertising which explains a utility's proposed or existing rate structure, its energy-related problems and its public programs and activities, provided such reference includes a description of how a consumer benefits from or is affected by same.

(2) Advertising expenditures by telephone, water, or sewage utilities which produce a "material benefit" include, but are not limited to the following:

(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;

(b) Advertising promoting competitive or other services which would have the effect of holding down the cost of providing basic service;

(c) Advertising conveying safety information in the direct use of utility equipment;

(d) Advertising promoting off-peak usage of existing facilities;

(e) Advertising which explains the use, cost, applicability or availability of new or existing utility equipment and other utility services where energy consumption would either be reduced or not materially increased;

(f) Advertising which furnishes factual and objective data programs to educational institutions on the subject of water, sewer or communications technology;

(g) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;

(h) Legal advertising notices to ratepayers required by statute, rule or order of the commission.

Section 4. Advertising Disallowed. (1) Advertising expenditures for political, promotional, and institutional advertising by electric or gas utilities shall not be considered as producing a material benefit to the ratepayers and, as such, those expenditures are expressly disallowed for ratemaking purposes.

(a) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an energy utility, or the

selection or installation of any appliance or equipment designed to use such utility's service.

(c) "Institutional advertising" means advertising which has as its sole objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(d) The terms "political advertising," "promotional advertising," and "institutional advertising" do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

(2) Advertising expenditures for political and institutional advertising by telephone, water, or sewage utilities shall not be considered as producing a material benefit to the ratepayers and, as such, these expenditures are expressly disallowed for ratemaking purposes.

(a) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) "Institutional advertising" means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(c) The terms "political advertising" and "institutional advertising" do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

Section 5. Burden of Proof. The utility shall have the burden of proving that any advertising cost or expenditures proposed for inclusion in its operating expenses for ratemaking purposes within a given test year fall within the categories enumerated in Section 3 or that such advertising is otherwise of material benefit to its ratepayers.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:021. Gas.

RELATES TO: KRS 278.485, 278.502
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to gas utilities.

Section 1. Definitions. For purposes of this regulation: "Commission" means the Public Service Commission.

Section 2. General. (1) The purpose of this regulation is to provide standard rules governing the service of gas utilities operating under the jurisdiction of the commission.

(2) Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of this commission, directly from transmission or gathering lines are exempt from Sections 7, 8, 9, 10, 11, 13, 15, 16, 17, and 18 insofar as they apply to these customers.

(3) Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.

(4) (a) Every utility transmitting gas by any pipeline intended to be subjected to pressures in excess of 100 psig shall:

1. Within ninety (90) days from the date of the effective date of this regulation file with the commission a report setting forth the respects in which such pipeline and its appurtenances conform or do not conform, as the case may be, to the standards, requirements and safeguards enumerated in these rules. Such statement shall be based upon records of the utility, including records of tests, specifications or other available data, and upon current investigations and surveys, not requiring excavation or interruption of service.
2. In each instance where any gas corporation required by subparagraph 1. to file a report claims that it is not possible or practicable to obtain the necessary data to prepare the same, a report setting forth such claim shall nevertheless be filed within the period required by subparagraph 1., and the basis for such claim shall be set forth in such verified statement.
3. In each instance in which the report required to be filed by this section states that any portion of such pipeline or its appurtenances does not conform to the standards, requirements and safeguards enumerated in these rules or that it is not possible or practicable to obtain the necessary data to prepare such a statement, the report shall state whether or not in the opinion of the person preparing the report, such portion of pipeline and its appurtenances is in safe operating condition.

(b) In each instance where it is stated that such pipeline or its appurtenances or any portion thereof is in safe operating condition, the basis for such statement shall be set forth including the operating conditions under which the opinion is expressed, and such report may be accompanied by an application of the gas corporation to the

commission for an exemption from the application of the rules herein enumerated.

Section 3. Definitions. (1) Meter. The word "meter" shall be construed to mean any device used for the purpose of measuring the quantity of gas delivered by a utility to a customer.

(2) Transmission line. "Transmission line" means a pipeline other than a gathering line that:

(a) Transports gas from a gathering line or storage facility;

(b) Operates at a hoop stress of twenty percent (20%) or more of SMYS; or

(c) Transports gas within a storage field.

(3) Distribution line. "Distribution line" means a pipeline other than a gathering line or transmission line.

(4) Service line. The term "service line" shall be construed to mean the line from the property line to the place of consumption.

(5) Service connection. The term "service connection" shall be construed to mean the line from the main to the customer's property line, and shall include all of the pipe fittings and valves necessary to make the connection.

(6) The term "cubic foot of gas" as used in these rules shall have the following meanings:

(a) In cases where gas is supplied and metered to customers at the standard distribution pressure, a cubic foot of gas shall be defined to be the volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.

(b) In cases where gas is supplied to customers through orifice or positive displacement meters at other than standard distribution pressure a cubic foot of gas shall be defined to be that volume of gas which, at sixty (60) degrees Fahrenheit and at absolute pressure of 14.73 pounds per square inch, (thirty (30) inches of mercury), occupies one (1) cubic foot; except that in cases where different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, such different bases shall be effective.

(c) The standard cubic foot of gas for testing the gas itself for heating value, shall be that volume of gas which, when saturated with water vapor and at a temperature of sixty (60) degrees Fahrenheit, and under a pressure equivalent to that of thirty (30) inches of mercury (mercury at thirty-two (32) degrees Fahrenheit, and under standard gravity) occupies one (1) cubic foot.

(7) The term "British thermal unit" shall mean the quantity of heat required to raise the temperature of one (1) pound of water one (1) degree Fahrenheit.

(8) The term "therm" shall mean a unit of heating value equivalent to 100,000 British thermal units.

Section 4. Construction Standards. (1) The following publications and codes are hereby adopted, and filed by reference, as standards of accepted good practice to be followed by all utilities under the jurisdiction of the commission except when such codes or publications conflict with the regulations of this commission.

(a) The commission being certified and financed by the Office of Pipeline Safety Operations, U.S. Department of Transportation, hereby adopts the "Minimum Federal Safety Standards, Title 49 CFR Part 192," as published in the Federal Register on October 1, 1979, and amendments through June 1, 1980, as Minimum Gas Safety Standards for the commission. The said federal minimum standards shall apply except where the rules adopted by this commission are more stringent than and not inconsistent with the federal standards. Nothing contained in these standards, however, shall prevent the commission from adopting, after due notice and hearing, additional or more stringent standards for intrastate gas facilities now under the commission's jurisdiction, provided that such standards are not inconsistent with the federal standards.

(b) National Fire Protection Association Standard No. 54, "National Fuel Gas Code" 1980 edition as published by the National Fire Protection Association, Quincy, Mass. 02210.

(c) National Fire Protection Association Standard No. 59, "LP Gases At Utility Gas Plants" 1974 edition as published by the National Fire Protection Association, Inc., Battery March Park, Boston, Massachusetts 02210.

(d) "Standard Methods of Gas Testing," Circular No. 48, National Bureau of Standards, 1916.

(e) "Testing Large Capacity Rotary Gas Meters," Research Paper No. 1741, National Bureau of Standards Journal of Research, September 1946.

(f) "Standard Method Test for Calorific Value of Gaseous Fuels by the Water-flow Calorimeter," American Society for Testing Materials, Standard D 900-55, 1974 edition as published by the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania.

(2) Reports and records of proposed construction:

(a) At least thirty (30) days prior to the construction or major reconstruction of any gas pipeline intended to be subjected to pressure in excess of 100 psig, or twenty percent (20%) of minimum yield strength, whichever is lower, a report shall be filed with the commission setting forth the specifications for such pipeline and the maximum allowable operating pressure.

(b) Every gas utility shall, on the 15th day of each month, submit a report to the commission setting forth the progress of such construction or major reconstruction as of the end of the preceding month.

(c) Before any gas pipeline or main is placed in operation intended to be subjected to pressures in excess of 100 psig, or twenty percent (20%) of minimum yield strength, whichever is lower, a report shall be filed with the commission certifying the maximum pressure to which the line is intended to be subject and also certifying that the pipeline has been constructed and tested in accordance with the requirements of the rules herein prescribed, and a further report shall be filed within sixty (60) days thereafter including the results of all tests made pursuant thereto. No gas pipeline or main shall be operated at pressures in excess of the pressure for which it was certified to the commission.

(d) The responsibility for the maintenance of necessary records to establish that compliance with the rules and regulations has been accomplished rests with the utility. Such records shall be available for inspection at all times by the commission or the commission's staff.

(3) The Minimum Federal Safety Standards, Title 49 CFR Part 192, as published in the Federal Register on August 19, 1970, (35 F.R. 13247) and revisions as of December 31, 1976 being the presently effective code the commission hereby adopts the following modifications and changes thereto:

(a) To 192.163 add: (The following is numbered in accordance with Title 49 CFR Part 192.):

"(f) Air Piping System:

"(1) All air piping within gas compressing stations shall be constructed in accordance with Section 2 of the USAS B31.1 Code for Pressure Piping.

"(2) The starting air pressure, storage volume, and size of connecting piping shall be adequate to rotate the engine at the cranking speed and for the number of revolutions necessary to purge the fuel gas from the power cylinder and muffler. The recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of having to start several of these engines within a short period of time.

"(3) A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the air piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. It is recommended that equipment for cooling the air and removing the moisture and entrained oil be installed between the starting air compressor and the air storage tanks.

"(4) Suitable provision shall be made to prevent starting air from entering the power cylinders of an engine and activating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply piping or locking closed a stop valve and locking open a vent downstream from it.

"(g) Air receivers. Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance with Section VIII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

"(h) Lubricating oil piping. All lubricating oil piping with gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3.

"(i) Water and steam piping. All water and steam piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Power Piping, USAS B31.1.0.

"(j) Hydraulic piping. All hydraulic power piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3."

(b) To 192.167 add: "(d) All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function."

(c) To 192.171 add: "(f) All fuel gas lines within a compressor station, serving the various buildings and residential areas, shall be provided with master shutoff valves located outside of any building or residential area."

(d) To 192.183 add: "(d) Vault or pit openings shall be located so as to minimuze the hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and the operating parts of the equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

"(e) Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover should be installed or other suitable precautions taken."

(e) To 192.279 add: "Copper pipe shall be joined by using either a compression type coupling or a brazed or soldered lap joint. The fillet material used for brazing, shall be a copper-phosphorous alloy or silver base alloy. Butt welds are not permissible for joining copper pipe or tubing. Connections using a copper or cast bronze service line tee or extension fitting sweat-brazed to the copper main, are recommended for service line connections to copper mains."

(f) To 192.305 add: "The inspector shall have authority to order the removal and replacement of any section that fails to meet the standards of this code."

(g) To 192.307 add: "Plastic pipe and tubing shall be adequately supported during storage and thermoplastic pipe, tubing and fittings shall be protected from long term exposure to direct sunlight."

(h) To 192.321 add to (a): " . . . and shall conform to the applicable provisions of 192.327 except that plastic pipelines and mains shall be installed with a minimum cover of twenty-four (24) inches at all stress levels" unless encased or otherwise protected.

(i) To 192.357(b) delete and add: "(b) The use of standard weight close (all thread) nipples is prohibited."

(j) To 192.361 add: "(g) Joining of Service Lines. All underground steel service lines shall be joined by threaded and coupled joints, compression type fittings, or by qualified welding procedures and operators.

"(h) When coated steel pipe is to be installed as a service line in a bore, care shall be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving, or similar methods or in a rocky type soil, the following practices or their equivalents are recommended.

"(1) The coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an average bore, removing the pipe used for boring and then inserting the coated pipe.

"(2) Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil when there is a likelihood of damage to the coating resulting from the insertion.

"(3) The recommendations in 1 and 2 do not apply where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil."

(k) To 192.467(f) add: "A study must be made in collaboration with the electric company on the common problems of corrosion and electrolysis taking the following factors into consideration:

"(1) The possibility of the pipeline carrying either unbalanced line currents or fault currents.

"(2) The possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.

"(3) Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.

"(4) Bonding connections between the pipeline and either the steel tower footings or the buried ground facilities or the ground-wire of the overhead electric system."

(l) To 192.503 delete (c) and add: "(c) Except as provided in 192.505(a), if air is used as the test medium, the following maximum hoop stress limitations apply:

Maximum Hoop Stress Permissible During Test

	Percent of Specified Minimum Yield			
Location Class	1	2	3	4
Test Medium Air	75	75	50	40

(m) To 192.505 delete entirely and add: "192.505 Strength test requirements for steel pipeline to operate at a hoop stress of thirty (30) percent or more of SMYS:

"(a) Except for service lines, each segment of a steel pipeline that is to operate at a hoop stress of thirty (30) percent or more of SMYS must be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In Class 1 locations, pipelines shall be tested to 1.25 times the maximum operating pressure and in Class 2 locations pipelines shall be tested to 1.50 times the maximum operating pressure. The test medium may be either air, water or inert gas except that if there is a building intended for human occupancy within 300 feet of the pipeline water must be used as the test media while the hoop stress exceeds fifty (50) percent of SMYS unless the buildings are evacuated during the test. Pipelines and mains in Class 3 and 4 locations shall be tested hydrostatically to a pressure not less than 1.50 times the maximum operating pressure.

"(b) In a Class 1 or Class 2 location, each compressor station, regulator station, and measuring station, must be tested to at least Class 3 location test pressure requirements.

"(c) Test pressure shall be maintained until the pressure has stabilized as far as possible in all portions of the test sections giving due consideration to changes in ambient temperatures. In no event shall the duration of the test be less than twenty-four (24) hours following such stabilization except that, in the case of a length of pipeline, main or piping which has not been backfilled prior to the test where, throughout its entire length, its entire circumference can be readily examined visually for the detection of leakage, the duration of the test shall be not less than four (4) hours following such stabilization.

"(d) Where water is utilized as the test medium, adequate provisions shall be made for disposal of the water and steps shall be taken to guard against contamination.

"(e) Requirements for hydrostatic testing of mains and pipelines in Class locations 3 and 4 do not apply if at the time the pipeline or main is first ready for test the ground temperature at pipe depth is thirty-two (32) degrees Fahrenheit or less, or might fall to that temperature before the hydrostatic test could be completed. In such cases an air test to 1.50 times the maximum operating pressure shall be made. Precautions shall be taken to protect the public.

"(f) Other provisions of these rules notwithstanding pipelines and mains crossing highways and railroads may be tested in each case in the same manner and to the same pressure as the pipelines on each side of the crossing.

"(g) If a component other than pipe is the only item being replaced or added to a pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that:

"(1) The component was tested to at least the pressure required for the pipeline to which it is being added; or

"(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

"(h) For fabricated units and short sections of pipe, for which a post installation test is impractical, a preinstallation strength test must be conducted by maintaining the pressure at or above the test pressure for at least four (4) hours."

(n) To 192.507 delete entirely and add: "192.507 Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress less than 30 percent of SMYS and above 100 psig must be tested in accordance with the following table except that air may be used as the test medium within the maximum limits set in 192.503(c).

Test Requirements for Pipelines and Mains to Operate at Hoop Stresses of thirty percent (30%) or less of the Specified Minimum Yield Strength of the Pipe and above 100 psig

Location Class	Permissible Test Fluid	Prescribed Test Pressure Minimum	Maximum
1	Water	1.25 x m.o.p.	None
	Air	1.25 x m.o.p.	1.25 x d.p.
2	Water	1.50 x m.o.p.	None
	Air	1.50 x m.o.p.	1.25 x d.p.
3	Water	1.50 x m.o.p.	None
4	Water	1.50 x m.o.p.	None

m.o.p. maximum operation pressure
d.p. design pressure

"(a) The pipeline operator must use a test procedure that will insure discovery of all potentially hazardous leaks in the segment being tested.

"(b) If during the test, the segment is to be stressed to twenty (20) percent or more of SMYS and air is the test medium:

"(1) A leak test must be made at a pressure between 100 psig and the pressure required to produce a hoop stress of twenty (20) percent of SMYS; or

"(2) The line must be walked to check for leaks while the hoop stress is held at approximately twenty (20) percent of SMYS.

"(c) The pressure must be maintained at or above the test pressure for at least one (1) hour."

(o) To 192.509 add: "(c) If substantial protective coatings are used that would seal a split pipe seam the leak test pressure shall be 90 psig.

(p) To 192.511(c) change fourth line to read as follows: " . . . must be tested to the maximum operating pressure or ninety (90) psig, whichever is greater, except . . ."

(q) To 192.55 add: "(f) New or used pipe of unknown specification and all used pipe the strength of which is impaired by corrosion or other deterioration, shall be retested hydrostatically either length by length in a mill type test or in the field after installation before being placed in service, and the test pressure used shall establish the maximum allowable operating pressure subject to the following limitations:

"(1) P for furnace butt welded pipe shall not exceed sixty (60) percent of the mill test pressure.

"(2) P shall not exceed eighty-five (85) percent of the mill test pressure for all other pipes; provided however, that pipe, mill tested to a pressure less than eighty-five (85) percent of the pressure required to produce a stress equal to the specified minimum yield, may be retested with a mill type hydrostatic test or tested in place after installation. In the event the pipe is retested to a pressure in excess of the mill test pressure, then P shall not exceed eighty-five (85) percent of the retest pressure rather than the initial test pressure. It is mandatory to use a liquid as the test medium in all tests in place after installation where the test pressure exceeds the mill test pressure."

(r) To 192.619(2)(ii) change Factor Table to read as follows:

Class Location	Factor Segment Installed before (Nov. 12, 1970)	Segment Installed after (Nov. 11, 1970)
1	1.10	1.25
2	1.40	1.50
3	1.40	1.50
4	1.40	1.50

(s) To 192.723 delete (b)—(1) and add: "(1) At least once a year a gas detector survey shall be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, and where access is not denied at inside basement walls of public and commercial buildings located adjacent to gas mains and service lines, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks."

(t) To 192.723(b) add: "(3) Each gas utility shall maintain a record of gas leaks reported by the public, employees or detected by leakage surveys. This record shall be maintained for a period of five (5) years."

(u) To 192.749(a) change 4th line to read: " . . . content of 100 cubic feet or more, must be . . . "

(v) To 192.751 add: "(d) When a pipeline or main can be kept full of gas during a welding or cutting operation, the following procedures are recommended:

"(1) Keep a slight flow of gas moving toward the point where cutting or welding is being done.

"(2) The gas pressure at the site of the work shall be controlled by suitable means.

"(3) Close all slots or open ends immediately after they are cut with tape, and/or tightly fitted canvas or other suitable material.

"(4) Do not permit two (2) openings to remain uncovered at the same time. This is doubly important if the two (2) openings are at different elevations.

"(e) No welding or acetylene cutting may be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent the leakage of gas into the pipeline or main.

"(f) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and precautions recommended above cannot be taken, one or more of the following precautions, depending upon circumstances at the job, are required.

"(1) Purging of the pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

"(2) Testing of the atmosphere in the vicinity of the zone to be heated before the work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.

"(3) Careful verification before the work starts that the valves that isolate the work from a source of gas do not leak.

"(g) When the main is to be separated a bonding conductor must be installed across the point of separation and maintained while the pipeline is separated. If overhead electric transmission lines parallel the pipeline right-of-way the current carrying capacity of the bonding conductor should be at least one-half (½) of the capacity of the overhead line conductors.

"(h) For additional purging procedures see A.G.A. publication "Purging Principals and Practices" (1975 Edition)."

(4) Venting of customer's service regulators. Each gas utilities' customers service regulator installed indoors shall be vented to the outside atmosphere and shall have a vent pipe sized no smaller than the manufacturer's vent connection built into the regulator.

(5) Exterior shut-off valves. Exterior shut-off valves shall be installed on all lines entering and leaving regulator stations for use in an emergency to stop the flow of gas, such valves to be installed at an accessible point and location where such valves can be operated in case of an emergency but in any event at least forty (40) feet from the regulator station if operation is below sixty (60) psig. If operating above sixty (60) psig, the valve shall be placed at least 100 feet from the station; if operated above 100 psig, the valve location shall be at least 200 feet from the station. A check valve may be used as the exterior shut-off valve on the downstream line in lieu of other valve if forty (40) feet from regulator. No connection shall be made between the inlet and the outlet shut-off valves, except the connections to the regulating station. A regulator station may contain metering equipment or other similar apparatus. The shut-off valve may be a sectionalizing valve. For the purpose of this rule the maximum pressure possible on the regulator station shall be controlling. Such valve shall be operated, tested and checked at least once a year to insure proper operating condition.

Section 5. Waste. All practices in the production, distribution, consumption, or use of natural gas which are wasteful, such as flambeau lights and the like, are hereby expressly prohibited.

Section 6. Measuring Production and Shipment into and out of the State. (1) All gas produced and purchased by a utility in Kentucky shall be measured and the quantity thereof recorded.

(2) All gas piped out of or brought into the state of Kentucky by a utility shall be measured and quantity thereof recorded.

Section 7. Odorization. (1) Any gas distributed to customers through gas mains or gas services, used for domestic purposes or in compressor plants or transmitted through Class 3 or Class 4 locations shall have a distinctive odor of sufficient intensity so that the presence of the gas may be detected down to a concentration in air of one percent (1%) by volume (approximately twenty percent (20%) of the lower explosive limit) to normal or average olfactory senses of a person coming from fresh ungasified air into a closed room, or by appropriate instruments. Whenever necessary to maintain this level of intensity, a suitable odorant shall be added in accordance with the specification in this rule.

(2) Odorants in the concentrations used shall be: harmless to humans, noncorrosive to steel, iron, brass, copper and leather and not soluble in water to an extent greater than 2.5 parts by weight of odorant to 100 parts by weight of water.

(3) Odorizing equipment shall be designed to maintain a reasonable uniform level of odor in the gas.

(4) Each utility shall make periodic checks to determine that proper level of odorization is maintained and keep records of same.

Section 8. Purity of Gas. (1) All gas supplied to

customers shall contain no more than: a trace of hydrogen sulphide; thirty (30) grains of total sulphur per 100 cubic feet, or five (5) grains of ammonia per 100 cubic feet. No gas shall contain impurities which may cause excessive corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

(2) When necessary, tests for the presence of hydrogen sulphide shall be made at least once each day, except Sundays and holidays, with the standard lead acetate paper method. Results shown by these test papers shall be properly recorded and filed, as specified by the commission.

(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia, except that any gas containing no coal gas need not be tested for ammonia. Approved methods of testing shall be used. Records of all tests shall be preserved as specified by the commission.

Section 9. Heating Value of Gas. (1) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following conditions:

(a) It shall be consistent with good service.

(b) It shall be that value which the utility, from its experience, determines is the most practicable and economical to manufacture and/or supply to its customers.

(2) Each utility shall file with the commission as a part of its schedule of rates or rules and regulations, the average total heating value of the gas, together with the indicated maximum expected fluctuation above and below the average total heating value which may be expected of a gas supplied by it in each district, division or community served.

(3) The utility shall be prepared to justify to the commission the standards adopted. The BTU standard adopted shall be expressed as part of the schedule of rates on file with the commission and shall not be changed without approval of the commission.

(4) The utility shall maintain the heating value of the gas with as little variation as is practicable, but such variation shall not be more than five percent (5%) above, or five percent (5%) below the standard adopted.

(5) The standard adopted shall be the monthly average total heating value of the gas, as delivered to customers at any point within one (1) mile of the manufacturing plant or center of distribution, and shall be obtained in the following manner: To obtain the monthly average, the results of all tests of heating value made on any day during the calendar month shall be averaged and the average of all such daily averages shall be used in computing the monthly average. Each utility selling more than 300,000,000 cu. ft. of gas annually shall make tests of heating value to conform at least to the minimum requirements of the following schedule:

Annual Sales of Gas - M Cubic Feet	Minimum Number of Tests Per Week Day	Minimum Interval Between Consecutive Tests in Hours
300,000 to 500,000	2	4
500,000 to 1,000,000	4	2
1,000,000 upward	6	2

(6) Definition of total heating value. The total heating value of a gas is the number of British thermal units produced by the combustion at constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, if saturated with water vapor and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit and under standard gravity, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion is condensed to the liquid stage.

(7) Compressed gas. Gas which has been compressed to more than five (5) pounds per square inch shall be tested for heating value after compression.

(8) Testing equipment. Each utility selling more than 300,000,000 cu. ft. of gas annually shall provide and maintain an approved standard calorimeter and all necessary accessories therefor for testing the heating value of gas. Such equipment shall be subject to approval and calibration by the commission. Utilities served directly from transmission lines shall be exempt from this rule if there is a provision for measuring the heating value of the gas on the transmission line and if such calorimeters are available to the commission for testing and certification.

(9) Whenever the standard heating value of the gas supplied is changed sufficiently to necessitate readjustment of appliances, it shall be incumbent upon the utility to properly adjust the customer's appliances to the new heating value as adopted under this rule.

(10) Where any unusual conditions exist any utility may apply to the commission to be relieved in part of the requirements of this rule.

(11) Any change in the heating value greater than subsection (4) of this section shall not be made without the approval of the commission and without adequate notice to the affected customers. In such event, the utility shall make any necessary adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

Section 10. Extension of Service. (1) Normal extension. An extension of 100 feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for such service.

(2) Other extensions:

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than 100 feet per customer, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over 100 feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: each year for a period of not less than ten (10) years which, for the purpose of this rule, shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage, the cost of the 100 feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period no refund will be required to be made.

(3) An applicant desiring an extension to a proposed real

estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of the 100 feet of the extension installed for each additional customer connected during the year but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension no refund will be required to be made.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than 100 feet upon a finding by the commission that such extension is reasonable.

Section 11. Service Connections. (1) Ownership of service.

(a) Utility's responsibility. In urban areas with well defined streets the utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service pipe from its main to the property line or to and including the curb stop and curb box if used. The curb stop may be installed at a convenient place between the property line and the curb. In cases where meters are located outdoors, the curb box and curb stop may be omitted if the meter installation is provided with a stopcock and the connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.

(b) Customers responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the curb stop to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

(c) Inspection. In the installation of a service line the customer shall not install any tees or branch connections and must leave the trench open and pipe uncovered until it is examined by an inspector of the utility and shown to be free from any irregularity or defect. The utility shall test the customer's piping for gas leaks, each time the gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired.

(2) Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

(3) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shut-off, the inside shut-off shall be of a type which can be sealed in the off position.

Section 12. Method of Measuring Service. (1) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through approved type meters except in cases of emergency or when otherwise authorized by the commission. Each meter shall bear an identifying number. When gas is sold at high pressures or large volumes, the contract or rate schedule shall specify the standards used to calculate the gas volume. Prepayment meters shall not be used except where there is no other satisfactory method of collecting payment for the service rendered.

(2) All gas delivered as compensation for leases, rights of way, or for other reasons, not charged for at the utility's regular schedule of charges, shall be metered and a record kept thereof. All meters and regulators installed for the purpose of measuring gas and for the purpose of regulating the pressure of gas shall be under the control of the utility and subject to the rules of the utility and the rules of the commission.

(3) The utility shall make no charge for furnishing and installing any meter or meter accessories necessary to measure the gas furnished, except by mutual agreement in special cases or except where duplicate or check meters are requested by the customer.

(4) Each gas utility shall adopt a standard method of meter and service line installation insofar as practicable. Such methods shall be set out with a written description and/or with drawings to the extent necessary for a clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of installing pipe for gas utilization. All meters shall be set in place by the utility.

(5) Each customer shall be metered separately except in cases of multi-occupants under the same roof with a common entrance or within an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(6) The utility may render temporary service to a customer and may require the customer to bear all of the cost of installing and removing the service in excess of any salvage realized. In this respect, a temporary service shall be considered to be service that is not required or used for more than one (1) year.

Section 13. Location of Meters. (1) Meters shall be easily accessible for reading, testing and making necessary adjustments and repairs, and where indoor type meters are necessary they shall be installed in a clean, dry, safe, convenient place. Unless absolutely unavoidable, meters shall not be installed in any location where the visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility. Existing meters which are located in places not permitted by this rule shall be relocated by the customer or owner to an approved location.

(2) Proper provision shall be made by the customer for the installation of the utility's meter. At least six (6) inches clear space shall be available, if possible, on all sides of the meter and not less than thirty (30) inches in front of it.

(3) When a number of meters are placed in the same location, each meter shall be tagged or marked to indicate the customer metered by it and such identification shall be preserved and maintained by the owner of the premises served.

(4) When the distance between the utility's main and the nearest point of consumption is more than 150 feet, the meter shall be located as near to the utility's main as may be practicable. This shall apply whether or not all or part

of the service line shall have been constructed by either the customer or utility.

(5) When customers are served from high pressure lines, the meters, regulator or regulators and safety devices shall be located as near to the utility's main as practicable.

Section 14. Accuracy Requirements for Meters. All tests to determine the accuracy of registration of any gas meters shall be made by a qualified meter man and with suitable facilities.

(1) Positive displacement meters:

(a) Before being installed for the use of any customer, every positive displacement gas meter, whether new, repaired or removed from service for any cause shall be in good order and shall be adjusted to be correct to within one-half (½) of one (1) percent, plus or minus when passing gas at approximately twenty percent (20%) and 100 percent of the rated capacity of the meter as given by the manufacturer at .5″ H_2O differential. A pilot test to determine that the meter will register at one-half of one percent (½ of 1%) of the rated capacity shall be made before placing meters in service.

(b) Meters removed from service for any reason shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty percent (20%) and 100 percent of the rated capacity of .5″ H_2O differential and results of said tests algebraically averaged to determine the accuracy. If the error is less than two percent (2%) this shall be reported as the "as found" test. If the error is more than two percent (2%) two (2) additional tests shall be made at twenty percent (20%) and 100 percent and the average of the three tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

(2) Large capacity meters:

(a) All meters other than positive displacement meters, regardless of type, shall be tested at approved intervals by the utility meter man using flow provers or other approved methods either in the shop or on location of use at the option of the utility and with the approval of the commission of facilities and methods used.

1. The accuracy of these meters shall be maintained as near 100 percent as possible.

2. Test ranges and procedures shall be as prescribed in adopted standards or approved by the commission.

(b) All meter installations shall be inspected for proper design and construction and all instruments, regulators and valves used in conjunction with the installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a competent meter man employed by the utility or by a competent person employed by the manufacturer of the meter installation. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by the commission. Subsequent test results shall be a portion of regular meter test reports to the commission by the utility.

Section 15. Pressure Gauges. (1) Each utility shall keep continually in use on its distribution system or systems one (1) or more accurate recording pressure gauges at each point of supply to the system or systems. These gauges must be located at such point or points and in such a manner as to give continuous record of the gas pressure and character of service being furnished.

(2) In addition to the recording pressure gauges required in subsection (1) of this section, all utilities distributing gas shall provide themselves with one (1) or more portable recording pressure gauges with which pressure surveys shall be made in sufficient number to indicate the service furnished and to satisfy the commission of the utility's compliance with pressure requirements.

(3) All recording pressure gauge charts shall be preserved and filed in a systematic manner and each chart shall show the date and location when the record was made. All charts must be kept on file by the utility for a period of at least two (2) years.

Section 16. Standard Pressure. (1) All utilities supplying gas for light, heat, power or other purposes shall, subject to the approval of the commission, adopt and maintain a standard pressure as measured at the customer's meter outlet. In adopting such standard pressure the utility may divide its distribution system into districts and establish a separate standard pressure for each such district, or the utility may establish a single standard pressure for its distribution system as a whole.

(2) The standard pressure to be adopted as herein provided shall be a part of the utility's schedule of rates and general rules and regulations.

(3) No change shall be made by a utility in the standard pressure or pressure adopted except in case of emergency.

Section 17. Allowable Variations of Standard Service Pressure. (1) The variations of standard pressure as established under the preceding rule shall not exceed the adopted pressure by more than fifty percent (50%) plus or minus.

(2) A utility supplying gas shall not be deemed to have violated subsection (1) of this section, if it can be shown that variations from said pressures are due to:

(a) Use of gas by the customer in violation of contract of the rules of the utility.

(b) Infrequent fluctuations of short duration due to unavoidable conditions of operation.

(3) Allowable variations in standard pressure other than those covered by subsection (1) of this section will be established by the commission when application is made and good cause shown therefor.

(4) The gas pressures required above shall be maintained at the outlet of the meter in such a manner to provide safe and efficient utilization of gas in properly adjusted appliances supplied through adequately sized customer's facilities.

Section 18. Continuity of Service. (1) The utility shall keep a complete record of all interruptions on its entire system or on major divisions thereof. The record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence. The commission shall be notified of major interruptions as soon as they come to the attention of the utility and a complete report made after restoration of service.

(2) An interruption of service, as the term is used here, shall also mean the interval of time during which the pressure drops below fifty percent (50%) of such adopted standard pressure on the entire system, or on one (1) or more entire major division or divisions for which an average standard pressure has been adopted.

Section 19. Meter Testing Facilities and Equipment. (1) Meter shop:

(a) Each utility, unless specifically excused by the commission, shall maintain a meter shop for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment, as well as the methods of measurements and testing employed, shall be subject to the approval of the commission.

(b) The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that the meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors. The proving room or the entire meter shop shall be air conditioned if necessary to achieve satisfactory temperature control.

(c) The proving room shall be well lighted and preferably not on an outside wall of the building. Temperature changes in the room shall be no greater than five (5) degrees Fahrenheit over a twenty-four (24) hour period. Temperatures at any one point in the room shall not vary from a simultaneous temperature at any other point in the room by more than one (1) degree Fahrenheit.

(2) Working standards:

(a) Each utility, unless specifically excused by the commission, shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but in no case of less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories, and such equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical of test by it, to within one-half of one percent (½ of 1%) plus or minus.

(b) The prover shall be accurate to within three tenths (.3) of one percent (1%) at each point used in testing meters.

(c) The prover shall not be located near any radiator, heater, steam pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

(d) During conditions of satisfactory operation the temperature of the air in the prover shall be within one (1) degree Fahrenheit of the ambient temperature, and the temperature of the oil in the prover shall not differ from the temperature of the ambient air by more than one (1) degree Fahrenheit.

(e) The meters to be tested shall be stored in such manner that the temperature of the meters is substantially the same as the temperature of the prover. In order to achieve this the meters shall be placed in the environment of the prover for a minimum of about five (5) hours, and preferably overnight.

(3) All testing instruments and other equipment shall at all times be accompanied by a certificate giving the date when it was last tested and adjusted and must be signed by a proper authority or a tag referring to such certificate may be attached when practicable. These certificates, when superseded, shall be kept on file in the office of the utility.

(4) Sixty (60) days after the effective date of this regulation, each utility shall advise the commission in writing as to the kind and amount of testing equipment available.

Section 20. Periodic Tests. (1) Periodic tests (of all meters) shall be made according to the following schedule:

(a) All positive-displacement meters, with a rated capacity up to and including 500 cubic feet per hour, shall be tested at least once every ten (10) years.

(b) All positive-displacement meters, with a rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

(c) All positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

(d) All orifice meters shall have their recording gauges tested at least once every six (6) months and the constant of the orifice plate tested every five (5) years.

(2) All meters in service on and after the effective date of this regulation for which there is on file in the utility's office no record of test within the time equal to the period of test for that class and rating of meter as specified in subsection (1) of this section shall be tested as soon thereafter as circumstances will permit and the meters with the greatest time elapsed since the last test shall be tested first. In no case shall the time of test of said meters, subsequent to the effective date of this regulation exceed one-half (½) of the required period of test for meters of that class and rating as specified in subsection (1) of this section. Whenever the number of meters of any type which register in error beyond the limits specified in these rules is deemed to be excessive, then this type shall be tested with such additional frequency as the commission may direct.

Section 21. Deviations from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:026. Gas service; service lines.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.485(3)
NECESSITY AND FUNCTION: KRS 278.485(1) provides that gas service shall be furnished at rates and charges as determined by the commission. KRS 278.485(3) requires that the installation and standards of safety for the installation of service lines may be prescribed by the commission. This regulation establishes the rules which apply to service from natural gas gathering pipeline systems.

Section 1. Construction Standards. Instances not covered by this regulation must meet, where applicable, the requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ANSI B31.8)" 1975 edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017; herein filed by reference.

Section 2. Definitions. (1) "Gathering line" means any pipeline gathering gas from a producing gas well; excluding pipelines on the discharge side of compressor stations.

(2) "Service line" means any pipeline beginning at the point of connection to the gathering line and ending at the point or points of consumption.

(3) "Gas company" means the owner of any producing gas well and/or gathering line.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall file applications at the local gas company office, which shall contain the following information:

(a) Name and address of the applicant.

(b) Purpose for which gas is requested.

(c) Name and address of contractor installing service line and other facilities required to be furnished by applicant.

(d) Name and address of gas company from which service is requested.

(2) Gas company shall furnish applicant with construction drawing showing installation and material meeting the company's specifications as approved by the commission for service installation.

(3) After receipt of the application, the gas company shall furnish the commission in Frankfort the name and address of the applicant and forward a copy of the application to the commission's representative in that area.

(4) Applicant's gas service line shall be inspected and approved by the commission representative before service is commenced. No service line will be inspected for which an application has not been received.

(5) The commission will notify the applicant by mail if the service line does not meet the requirements of its rules and regulations. If the defects are not corrected within the time permitted, the commission will notify the gas company and the application shall be discontinued by the company until such defects are corrected.

(6) The gas company shall furnish, install and maintain the meter which shall remain its property.

(7) The service tap including saddle and first service shutoff valve shall be installed by the gas company and shall remain its property.

(8) All other equipment and material required for such service shall be furnished, installed and maintained by applicant at his expense and shall remain applicant's property.

(9) If leaks or other hazardous conditions are detected in the service line, the gas company shall discontinue service until such leaks or other hazardous conditions are repaired or remedied by consumer.

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be two (2) inches or less in diameter but smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (½) of the pipe surface, preferably at an angle of forty-five (45) degrees.

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding the regulating equipment, but may be omitted upon approval of the commission's representative.

Section 5. Control and Limiting of Gas Pressure. (1) When maximum pressures may exceed sixty (60) p.s.i. a service regulator and a secondary regulator located upstream from the service regulator shall be installed. The regulators shall be spring type, and the secondary regulator shall in no case be set to maintain a pressure higher than sixty (60) p.s.i. A spring type relief valve shall be installed between the secondary regulator and the service regulator to limit the pressure on the inlet of the service regulator to sixty (60) p.s.i. or less in case the secondary regulator fails to function properly.

(2) Every service line shall be equipped with an adequate spring type relief valve on the outlet side of the meter installation.

(3) Regulators shall not be by-passed.

(4) Each relief valve shall be vented into the outside air.

(5) Vents shall be covered to prevent water and insects from entering.

(6) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(7) Each service shall have an insulating joint which shall follow the regulating units.

(8) Regulating equipment shall be properly protected by the applicant.

Section 6. Service Lines and Metering Facilities. (1) The customer shall furnish and install the service line from tap to point of consumption. The customer shall also secure all rights-of-way, railroad, highway and other crossing permits. The customer's service line shall be laid on undistributed or well compacted soil in a separate trench avoiding all structures and hazardous locations. Where service line passes through cultivated land, the trench shall be of sufficient depth to permit a backfill cover of twenty-four (24) inches above the service line. In other locations, the trench depth shall be eighteen (18) inches where practicable. No structure shall be erected over the service line.

(2) No branch tee or other connection shall be permitted on the line to serve any user other than the applicant except with the prior written consent of the gas company and the applicant, in which event the service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. Such shutoff valve shall have an operating pressure of eight (8) ounces with a shutoff pressure setting of not less than two (2) ounces.

(3) Service lines shall be constructed so as to avoid subsurface structures but in no case shall service lines be constructed within a distance of less than thirty-six (36) inches from any subsurface structure or parallel thereto closer than thirty-six (36) inches.

(4) Service lines shall be purged for at least fifteen (15) minutes after testing to remove any air accumulations.

(5) Metering pressure shall not exceed eight (8) ounces.

(6) Service lines shall be constructed of new black steel pipe from the gas meter to the outlet side of the stopcock located on the riser entering into the building and shall be of a size not less than one and one-fourth (1¼) inches.

(7) Service lines shall enter buildings above the ground level with shutoff valve located on the riser.

(8) Each service shall have an automatic cut-off valve with manual reset to shut off gas if gas pressure fails. The valve may be part of the final stage regulator when only one (1) customer is served from the service line.

Section 7. Payment of Bills or Other Default. (1) The customer shall pay the installation charge and thereafter

pay the gas company for all gas delivered at rates determined therefor by the commission. The gas company shall render statements to the customer at regular monthly or bimonthly intervals for gas delivered, which said statements shall be rendered not later than ten (10) days following each billing period. No gas company shall discontinue service to any customer for nonpayment of bills (including delayed payment charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cutoff shall not be effected before fifteen (15) days after the mailing date of the original bill. Service shall not be re-establsihed until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of five dollars ($5), and placed himself in full compliance with the regulations of the commission pertaining to such service. In the event the customer fails or refuses to pay such unpaid bill(s) and turn-on charge and/or place himself in compliance with the regulations of the commission within thirty (30) days from the date the gas is turned off, the gas company may disconnect customer's service line from its gathering line and service shall not be re-established until the customer has complied with the regulations of the commission pertaining to initial service.

(2) The gas company shall have the right, if it so elects, to require a cash deposit or other guaranty from the customer to secure payments of bills.

Section 8. General Provisions. The gas company shall at all times have access to the premises where the connection is made and the meter is located with the right to shut off the gas and remove its property from said premises upon reasonable notice for any of the following reasons: for repairs or because of leakage; for non-payment of any bills; for failure to make a cash deposit, if such be required; for any violation of this regulation; moving of the customer from the presmises; for fraudulent tampering with the meter, regulators or connections; for shortage of gas or reasons of safety; for larceny of gas; for any action by a customer to secure through his meter gas for purposes other than those requested, or for any other party without the written consent of the gas company; for false representation with respect to the ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Each gas company may make and collect an initial charge of fifty dollars ($50) for each service tap, including saddle and first shutoff valve which, under this regulation, are required to be furnished and installed by the gas company. No part of this charge shall be refunded by the gas company.

(2) The monthly charges for gas service, except as hereinafter expressly provided, shall be as follows:

For the First	2 MCF	$ .80 per MCF
For the Next	28 MCF	.60 per MCF
For the Next	570 MCF	.50 per MCF
All Over	600 MCF	.40 per MCF
The minimum bill shall be		1.60 per month

(3) The only exception to the charges outlined above shall be that when any gas producing area is served by one (1) company, such company may elect to apply its own tariffs which have been filed and approved by the commission, plus the fifty-dollar ($50) charge for the service tap, including saddle and first service shutoff valve.

(4) The provisions contained herein shall apply only to connections and services made pursuant to the provisions of KRS 278.485 and subsequent to the effective date of this regulation.

Section 10. Deviation from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:031. Gas well determinations.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.010(4)(b), 278.040(3), 278.110
NECESSITY AND FUNCTION: KRS 278.010(4)(b) and 278.040 subject the production of natural or manufactured gas, or a mixture of same, to or for the public for compensation, for heat or other uses, to the jurisdiction and regulation of the Public Service Commission. The federal Natural Gas Policy Act of 1978 became effective on December 1, 1978. This Act sets forth and defines certain classifications of natural gas to which are assigned maximum lawful prices that may be obtained by gas producers. The Act further provides that it shall be the duty of each state agency possessed of appropriate regulatory jurisdiction to make determinations as to the applicability of the statutorily defined classifications to particular gas wells within that state. Such determinations are to be forwarded to the Federal Energy Regulatory Commission for final determination.

KRS 278.110 empowers the Public Service Commission to contract for services of persons in a professional or scientific capacity to perform the duties and exercise the powers conferred by law on the commission. The commission has contracted with the Department of Mines and Minerals for the purpose of securing the assistance of that department's Division of Oil and Gas Conservation in collecting and analyzing data necessary for the making of the determinations described hereinabove.

It is the purpose of this regulation to set forth the manner whereby the Public Service Commission will discharge the duties conferred upon it by the Natural Gas Policy Act of 1978.

Section 1. Definitions. For purposes of this regulation: "Commission" means the Public Service Commission.

Section 2. Applications for Determinations. (1) Any owner or operator of a well productive of natural gas within this state may obtain a determination as to whether

such well qualifies for one or more of the classifications set forth in sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978 by making application to the Department of Mines and Minerals, Division of Oil and Gas Conservation, Post Office Box 680, Lexington, Kentucky 40586.

(2) Each application shall include the following items:

(a) A completed Federal Energy Regulatory Commission (FERC) Form Number 121;

(b) All information, records, documents, notices and affirmations required by 18 Code of Federal Regulations (CFR) Part 274, subpart B;

(c) Any other information, record, document, or affirmation necessary to substantiate and support the determination sought;

(d) A certified check or United States Postal Money Order in the amount of fifty ($50) dollars made payable to the Department of Mines and Minerals.

(3) Each application shall be submitted on forms available upon request to the Department of Mines and Minerals, Division of Oil and Gas Conservation, Post Office Box 680, Lexington, Kentucky 40586.

Section 3. General Requirements. (1) An applicant shall not be limited to one (1) determination per well, but may obtain all determinations to which a given well is entitled pursuant to the Natural Gas Policy Act of 1978.

(2) A separate application must be completed for each determination sought.

(3) If the person filing an application is an individual, the filing shall be signed by such individual, or in the case of a minor or other legally disabled person, his qualified legal representative. If the person making the filing is a corporation, partnership or trust, the filing shall be signed by a responsible official of the corporation, a general partner of the partnership or the trustee of the trust. In the case of any other legal entity, the operator of the well may sign the application.

(4) An operator under a joint operating agreement may sign an application for a well covered by the operating agreement if notice of the application is given by the operator to all other parties to the joint operation agreement and that fact is certified in the application.

(5) Where an application for a determination is sought for natural gas for which the applicant has an identified purchaser, the application shall include a statement that the applicant has delivered or mailed a copy of the completed FERC Form No. 121 to the purchaser.

(6) The confidentiality of any information, record or document submitted by an applicant shall be governed by KRS 61.870 to 61.884.

Section 4. Processing of Applications. (1) Upon receipt of each application submitted in accordance with this regulation, the Department of Mines and Minerals will date-stamp the application and analyze the data submitted to determine whether the applicant is entitled to the determination sought pursuant to the Natural Gas Policy Act of 1978 and 18 CFR Parts 271 and 274, subpart B.

(2) Based upon its review of the application, the Department of Mines and Minerals will make a recommended determination and forward the application and recommended determination to the commission.

(3) Upon receipt of an application and recommended determination, the commission shall cause to be made public notice of the recommended order of the Department of Mines and Minerals by publication in the legal notice section of a newspaper of statewide circulation.

(4) Any interested person may request a hearing on any application by written notification to the commission specifically stating the grounds for such request.

(5) If the request for a hearing is received by the commission within ten (10) days of the publication of the recommended determination and the hearing request states grounds which, if proven, would support a reversal or remand of the recommended determination, then the commission will schedule and conduct a hearing in accordance with the procedures set forth in 807 KAR 5:001, Section 4(1), (2), (3), (4) and (5).

(6) On the basis of the substantial evidence adduced at the hearing, the commission shall issue a final order affirming or reversing the recommended determination of the Department of Mines and Minerals.

(7) If no hearing is requested within ten (10) days of the public notice of the recommended order, the commission shall issue a final order affirming the recommended determination unless upon review of the application it finds that:

(a) The recommended determination is not supported by substantial evidence in the record upon which it was made; or

(b) The recommended determination is not consistent with information contained in any public record which is not a part of the record upon which it was made.

(8) The provisions of subsections (6) and (7) notwithstanding, the commission may remand any application to the Department of Mines and Minerals for further consideration if as a result of evidence received at a hearing or upon its own review, it finds the existence of material information not made a part of the application record which would be outcome determinative.

(9) Within fifteen (15) days after issuing a final order pursuant to this regulation, the commission shall forward the order and the entire record upon which it was made to the Federal Energy Regulatory Commission in the manner prescribed by 18 CFR 274.104.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:041. Electric.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This regulation establishes general rules which apply to electric utilities.

Section 1. Definitions. For purposes of this regulation: "Commission" means the Public Service Commission.

Section 2. General Requirements. Every utility shall furnish adequate service and facilities at the rates filed with the commission, and in accordance with the regulations of the commission and the rules of the utility applicable thereto. The energy shall be generated, transmitted, converted and distributed by the utility, and utilized, whether by the utility or the customer, in such manner as to obviate undesirable effects upon the operation of standard services or equipment on the utility, its customers and other utilities.

Section 3. Acceptable Standards. Unless otherwise specified by the commission, the utility shall use the applicable provisions in the following publications as standards of accepted good engineering practice for the construction and maintenance of plant and facilities, herein incorporated by reference:

(1) National Electric Safety Code; ANSI C-2. 1981 Edition;

(2) National Electrical Code; NFPA 70. 1981 Edition;

(3) American National Standard Code for Electricity Metering; ANSI C-12. 1975 Edition;

(4) USA Standard Requirements, for Instrument Transformers; USAS C57.13. 1968 Edition.

Section 4. Generating Station Meter Records. Every utility shall install such watt-hour meters as may be necessary to obtain a record of the output of its generating station or stations. Every utility purchasing electrical energy shall install such meters as may be necessary to furnish a proper record of its purchases, unless such instrument or instruments are installed by the selling company.

Section 5. Maintenance or Continuity of Service. (1) Each utility shall make all reasonable efforts to prevent interruptions of service, and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay. Whenever the service is necessarily interrupted or curtailed for the purpose of working on equipment, it shall be done at a time, which if at all practicable, will cause the least inconvenience to customers, and those customers which may be seriously affected shall be notified in advance, except in cases of emergency.

(2) Each utility shall keep a record of: the time of starting and shutting down the principal units of its power station equipment and feeders for major divisions; the indications of sufficient switchboard instruments to show the voltage and quantity of the load; of all interruptions to service affecting the entire distribution system of any single community or an important division of a community, and include in such record the date and time of interruption, the date and time of restoring service, and when known, the cause of each interruption.

(3) When complete distribution systems or portions of communities have service furnished from unattended stations, these records shall be kept to the extent practicable. The record of unattended stations shall show interruptions which require attention to restore service, with the estimated time of interruption. Breaker or fuse operations affecting service shall also be indicated even though duration of interruption may not be known.

Section 6. Voltage and Frequency. (1) Each utility shall adopt a standard nominal voltage or standard nominal voltages, as may be required by its distribution system for its entire constant-voltage service, or for each of the several districts into which the systems may be divided, which standard voltages shall be stated in every schedule of rates of each utility or in its terms and conditions of service.

(2) The voltage at the customer's service entrance or connection shall be maintained as follows:

(a) For service rendered primarily for lighting purposes, the variation in voltage between 5 p.m. and 11 p.m. shall not be more than five (5) percent plus or minus the nominal voltage adopted and the total variation of voltage from minimum to maximum shall not exceed six (6) percent of the nominal voltage.

(b) 1. For service rendered primarily for power purposes, the voltage variation shall not at any time exceed ten (10) percent above or ten (10) percent below standard nominal voltage.

2. Where a limited amount of lighting is permitted under these contracts, the entire load shall be considered power as far as voltage variation is concerned.

(c) Where the utility's distribution facilities supplying customers are reasonably adequate and of sufficient capacity to carry the actual loads normally imposed, the utility may require that equipment on customer's premises shall be such that starting and operating characteristics will not cause an instantaneous voltage drop of more than four (4) percent of the standard voltage or cause objectionable flicker in other customer's lights.

(d) Equipment supplying constant current circuits shall be so adjusted as to furnish as nearly as practicable the rated current of the circuit supplied, and in no case shall the current vary more than four (4) percent above or below the rating of the circuit.

(3) Each utility supplying alternating current shall adopt a standard frequency of sixty (60) cycles which shall be stated in the schedule of rates of each utility. The utility shall maintain this frequency to within three (3) percent above and three (3) percent below the standard at all times; provided, however, that momentary variations in frequency greater than three (3) percent, which are not due to lack of reasonable care on the part of the utility in the selection and operation of equipment, shall not be considered a violation of this rule.

(4) A standard clock shall be maintained to control each system frequency. The accuracy of the standard clock shall be checked each day and the frequency shall be governed within the limits given above so that the clocks on the system are correct once daily.

(5) Variations in voltage in excess of those specified caused by the operation of power apparatus on customer's premises which necessarily required large starting currents and affecting alone the user of such apparatus, by the action of the elements and infrequent, and unavoidable fluctuations of short duration due to system operation, shall not be considered a violation of this rule.

(6) A greater variation of voltage and frequency than herein specified may be allowed when service is supplied directly from a transmission line, or in case of emergency service, or in a limited or extended area where customers are so widely scattered and/or that the business done does not justify close voltage regulation. In such cases the best voltage regulation shall be provided that is practicable under the circumstances.

Section 7. Voltage Surveys and Records. (1) Every utility shall provide itself with two (2) or more portable indicating voltmeters and one (1) or more recording or graphic voltmeters of type and capacity suited to the voltage supplied. Every utility shall make a sufficient number of voltage surveys to indicate the service furnished

from each center of distribution, and to satisfy the commission of its compliance with the voltage requirements, shall keep at least one (1) of these instruments in continuous service at some representative point on its system. All records shall be available for inspection by the utility's customers.

(2) Each graphic recording voltmeter shall be checked with a working standard indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location. Notations on each chart shall indicate when the registration began (time and date) and when the chart was removed, as well as the point where the voltage was taken, and the results of the check with indicating voltmeter.

Section 8. Servicing Utilization Control Equipment. (1) Utilities shall service and maintain any equipment they use on customer's premises and shall adjust thermostats, clocks, relays, or time switches, if such devices must be so adjusted to provide service in accordance with their rate provisions.

(2) The time switches used by the utility for controlling equipment such as water heaters and street lights shall be of such quality that the timing mechanism may be adjusted so as to be accurate within ten (10) minutes per month. Time switches used by the utility for controlling street lighting or display lighting shall be inspected or operation observed at least once a month and if in error, adjusted, and also adjusted upon complaint if found in error or when service interruptions cause them to be in error by one-half (½) hour or more. Time switches and control devices used by the utility for controlling off-peak appliances shall be inspected or operation observed periodically and adjusted if in error, and also adjusted upon complaint if found in error or whenever service interruptions result in error of two (2) hours or more or in supplying service to off-peak appliances during peak periods.

Section 9. Measuring Customer Service. (1) All energy sold within the State of Kentucky shall be measured by commercially acceptable measuring devices owned and maintained by the utility, except where it is impracticable to meter loads, such as multiple street lighting, temporary or special installations, in which case the consumption may be calculated. The utility shall meter electrical energy used by itself except when such service is for the purpose of emergency or incidental lighting as outdoor substations, or at remote points on its transmission or distribution lines. All other electrical quantities which the utility's tariff indicates are to be metered shall be metered by commercially acceptable instruments owned and maintained by the utility.

(2) The utility shall regard each point of delivery as an independent customer and meter the power delivered thereat. The practice of combining meter readings taken at separate points, or of measuring the energy used by more than one (1) residence or place of business on one (1) meter for the purpose of obtaining a lower rate, is absolutely prohibited.

(3) Metering facilities located at any point where energy may flow in either direction and where the quantities measured are used for billing purposes shall consist of meters equipped with ratchets or other devices to prevent reverse registration and be so connected as to meter separately energy flow in each direction.

(4) Reactive meters required to meet the conditions of a given rate schedule shall be either all ratcheted or none shall be ratcheted. Reactive metering shall not be employed for determining average power factor for billing purposes where energy may flow in either direction or where a customer may generate an appreciable amount of his own requirements.

(5) Meters which are not direct reading and those operating from instrument transformers shall have the multiplier plainly marked on the dial of the instrument or otherwise suitably marked and all charts taken from recording meters shall be marked with the date of the record, the meter number, customer and chart multiplier.

(6) The register ratio shall be marked on all meter registers. Meters already in service may be so marked when they are tested.

(7) The watt-hour constant for the meter itself shall be placed on all watt-hour meters. Meters already in service shall be so marked when they come to the meter shop.

Section 10. Service Connections. (1) The utility shall pay the entire cost of a service drop or an initial connection to its line with the customer's service outlet, except the attaching of the wire support to the customer's premises. When the customer's outlet for any reason is inaccessible to the utility, or for any reason the customer desires that the service outlet on any building be at a location other than that closest to the utility's line, the cost of such special construction as may be found necessary shall be borne by the customer. The customer may require the utility to furnish at its expense an amount of wire, labor and material equivalent to that furnished for a like service connection not requiring such special construction.

(2) Underground service requirements and regulations shall be established by each utility and be on file with the commission.

(3) All equipment and material furnished by the utility at its own expense shall remain the property of the utility and may be removed by it at any reasonable time after the discontinuance of service.

Section 11. Distribution Line Extensions. (1) Normal extensions. An extension of 1,000 feet or less shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service. The "service drop" to the house from the distribution line at the last pole shall not be included in the foregoing measurements.

(2) Other extensions:

(a) When an extension of the utility's line to serve an applicant or group of applicants amounts to more than 1,000 feet per customer, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over 1,000 feet per customer to be deposited with the utility by the applicant or applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a period of not less than ten (10) years, which for the purpose of this rule shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage the cost of 1,000 feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period no refund will be required to be made.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 1,000 feet of the extension installed for each additional customer connected during the year, but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension no refund will be required to be made.

(4) Nothing contained herein shall be construed as to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 1,000 feet upon a finding by the commission that such extension is reasonable.

Section 12. Distribution Line Extensions to Mobile Homes. (1) All extensions of up to 150 feet from the nearest facility shall be made without charge.

(2) Extensions greater than 150 feet from the nearest facility and up to 300 feet shall be made provided the customer shall pay the utility a "customer advance for construction" of fifty dollars ($50) in addition to any other charges required by the utility for all customers. This advance shall be refunded at the end of one (1) year if the service to the mobile home continues for that length of time.

(3) For extensions greater than 300 feet and less than 1,000 feet from the nearest facility, the utility may charge an advance equal to the reasonable costs incurred by it for that portion of the service beyond 300 feet plus fifty dollars ($50). Beyond 1,000 feet the extension policies set forth in Section 11 apply.

(a) This advance shall be refunded to the customer over a four (4) year period in equal amounts for each year the service is continued.

(b) If the service is discontinued for a period of sixty (60) days, or should the mobile home be removed and another not take its place within sixty (60) days, or be replaced by a permanent structure, the remainder of the advance shall be forfeited.

(c) No refunds shall be made to any customer who did not make the advance originally.

(4) All utilities which have mobile home rules on file which differ from the provisions set out above shall within ninety (90) days after the effective date of this regulation file revised regulations complying with the above provisions.

Section 13. Testing Equipment and Standards. (1) Each utility shall maintain sufficient laboratories, meter testing shops, standards, instruments and facilities to determine the accuracy of all types of meters and measuring devices used by the utility except as provided in 807 KAR 5:006, Section 13.

(2) The following testing equipment shall be available as minimum requirements for each utility, and/or agency making tests or checks for a utility pursuant to 807 KAR 5:006, Section 13(2):

(a) One (1) or more working rotating standards and associated devices of capacity and voltage range adequate to test all watt-hour meters used by the utility.

(b) One (1) or more rotating standards, which shall be the utilities master rotating standards, used for testing the working rotating standards of the utility. These standards shall be of an approved type, shall be well compensated for both classes of temperature errors, practically free from errors due to ordinary voltage variations, and free from erratic registration due to any cause. These master rotating standards shall be of capacity and voltage range adequate to test all working rotating standards at all loads and voltages at which they are used, and shall be kept permanently at one place and not used for routine testing.

(c) Working indicating instruments, such as ammeters, voltmeters and wattmeters, of such various types as are required to determine the quality of service to customers.

(d) A voltmeter and ammeter, which shall be master indicating instruments, and which shall be used for the testing of working indicating and recording instruments. These instruments shall be of an approved type and of accuracy class and range sufficient to determine the accuracy of working instruments to within five-tenths (0.5) percent of all ranges and scale deflections at which working instruments are used. They shall be kept permanently at one place and not used for routine testing.

(3) The utility's master rotating standards shall not be in error by more than plus or minus three-tenths (0.3) percent at 100 percent power factor, nor more than plus or minus five-tenths (0.5) percent at fifty (50) percent power factor at loads and voltages at which they are used, and shall not be used to check or calibrate working standards unless the master standard has been certified as to accuracy by the commission within the preceding twelve (12) months. Each master rotating standard shall have a history card and calibration data available, and when used to calibrate working standards, correction for any error of the master standard shall be applied.

(4) All working rotating standards when regularly used shall be compared with a master standard at least once in every two (2) weeks. Working rotating standards infrequently used shall be compared with a master standard before they are used.

(5) Working rotating standards shall be adjusted, if necessary, so that their accuracy will be within plus or minus three-tenths (0.3) percent at 100 percent power factor and within plus or minus five-tenths (0.5) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used. A history and calibration record shall be kept for each working rotating standard showing all pertinent data and the name of person performing tests.

(6) After having adjusted working rotating standards to the accuracy specified above, service measuring equipment shall be adjusted to within the accuracies required, assuming the working rotating standards to be 100 percent accurate.

(7) If calibration charts are attached to working rotating standards and the error indicated is applied to all tests run and the accuracy on any range has not varied more than two-tenths (0.2) percent during the past twelve (12) regular test periods, the accuracy limits may be extended to plus or minus five-tenths (0.5) percent at 100 percent power factor and plus or minus seven-tenths (0.7) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used.

(8) The utility's master indicating instruments shall not be in error by more than plus or minus five-tenths (0.5)

percent of indication at commonly used scale deflections and shall not be used to check or calibrate working indicating instruments unless the master instrument has been checked and adjusted, if necessary, and certified as to accuracy by the commission within the preceding twenty-four (24) months. A calibration record shall be maintained for each instrument.

(9) All working indicating instruments shall be checked against master indicating instruments at least once in each six (6) months. If the working instrument is found appreciably in error at zero (0) or in error by more than one (1) percent of indication at commonly used scale deflections, it shall be adjusted. A calibration record shall be maintained for each instrument showing all pertinent data and the name of person performing tests.

Section 14. Check of Standards by Commission. (1) Each utility, and/or agency making tests or checks for a utility, shall submit to the commission Meter Standards Laboratory, its master rotating standard once in each year, and its master indicating voltmeter and ammeter once in each two (2) years.

(2) At the discretion of the commission any or all of these required tests may be made at the utility's or agency's testing facility by means of portable transfer standards maintained by the commission. If the standards satisfy the requirements of the rules and regulations of the commission a Certificate of Accuracy shall be issued by the commission's Division of Engineering.

(3) Each utility which normally checks its own master rotating standards, and master indicating instruments against primary standards such as precision wattmeters, volt boxes, resistances, standard cells, potentiometers, and timing devices, shall calibrate the master rotating standards and indicating instruments before they are submitted to the commission for test, and attach to them a record of such calibration.

Section 15. Testing of Metering Equipment. (1) The test of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. All metering equipment shall be in good order, and shall be adjusted to as close to zero (0) error as possible.

(2) No meter or measuring device shall be deliberately set in error by any amount. Because of unavoidable irregularities of work done on a commercial scale, some accuracy tolerance must be allowed. In a properly run shop, most meters can be set within one-half (½) percent and virtually all can be set within one (1) percent. Further, meters with defective parts shall be repaired regardless of their accuracy.

(3) When tests will be made. Metering equipment, including instrument transformers and demand meters, shall be tested for accuracy within one (1) year prior to being placed in service, periodically in accordance with the schedule below, upon complaint, when suspected of being in error, and when removed from service for any cause.

Period Test Schedule	
Self-Contained Meters	
Single phase	8 years
3 wire network	8 years
Polyphase	6 years
Meters used with instrument transformers	
Single phase	6 years
Polyphase	4 years
Demand Meters	
Indicating block-interval and lagged-demand meters	same as associated watthour meter
Graphic and pulse operated recording demand meters	2 years
Instrument Transformers	
Current: high burden test	same as associated watthour meter
Potential: secondary voltage test	same as associated watthour meter
Var-hour Meters	same as associated watthour meter
Direct Current Watthour Meters:	
Up to and including 6 KW	4 years
Over 6 KW thru 100 KW	2 years
Over 100 KW	1 year

(4) Where tests will be made. Tests may be made at a meter shop, on the customer's premises, or in a mobile shop.

Section 16. Sample Testing of Single Phase Meters. A utility desiring to adopt a scientific sample meter testing plan for single phase meters rated twelve (12) KVA and less shall submit its application to the commission for approval. Upon such approval the sample testing plan may be followed in lieu of the periodic test prescribed in Section 15(3). The plan shall include the following:

(1) Meters shall be divided into separate groups to recognize differences in operating characteristics due to changes in design, taking into consideration date of manufacture and serial number.

(2) The sampling procedure shall be based upon accepted statistical principles.

(3) The same sampling procedure shall be applied to each group.

(4) Each utility authorized to test meters by sample meter testing plan shall comply with the following conditions:

(a) Each year, after the sampling procedure has been applied to each group of meters and the accuracy of the groups determined, the utility shall use the following table to determine the percentage of the total meters in each group to be tested. The number of meters in the sample tested may be included in the total when determining the number of additional meters required to be tested from the table below. The number of meters in addition to the sample shall be taken from those meters in each group longest in service since the last previous test.

Percentage of Meters Within Limits of 2% Fast or Slow (Indicated by Sample)		Percentage of Meters to be Tested Annually
99.0	100.0	2
98.0	98.9	4
97.0	97.9	6
96.0	96.9	8
95.0	95.9	10
93.0	94.9	12
91.0	92.9	14
Less than	91.0	16

(b) Provided, however, that no meter shall remain in service without periodic test for a period longer than twenty-five (25) years.

(5) Whenever a meter is found to be more than two (2)

percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (½) the elapsed time since the last previous test but in no case to exceed three (3) years.

Section 17. Test Procedures and Accuracy Requirements. (1) Meters and/or associated devices shall be tested at the loads indicated below and adjusted as close as practicable to zero (0) error when found to exceed the tolerance prescribed below.

A. C. Watt-hour Meters

% of Test Current	Power Factor	Allowable Tolerance
100	1.0	+ or - 1.0%
10	1.0	+ or - 1.0%
100	0.5	+ or - 1.0%

D. C. Watt-hour Meters

% of Test Current	Allowable Tolerance
100	1.0%
10	1.0%

(a) Only one (1) test run shall normally be required at each test configuration. However if the test indicates the meter is more than two (2) percent in error fast or slow, one (1) or more additional tests shall be made to verify the accuracy prior to refunding or back billing the customer.

(b) When a meter is tested on complaint or request, additional test runs should be made and care exercised to insure that any trouble with the meter will be detected.

(c) For refund and back billing purposes the accuracy of the meter shall be determined by adding the average registration at light load (ten (10) percent of test current) and the average registration at full load (100 percent of test current) and dividing by two (2).

(2) Demand meters. A demand meter, demand register, or demand attachment used to measure customer's service shall:

(a) Be in good mechanical and electrical condition.

(b) Have proper constants, indicating scale, contact device, and resetting device.

(c) Not register at no load.

(d) Be accurate to the following degrees:

1. Graphic meters which record quantity-time curves and integrated-demand meters shall be accurate to within plus or minus two (2) percent of full scale throughout their working range. Timing elements measuring specific demand intervals shall be accurate to within plus or minus two (2) percent and the timing element which serves to provide a record of the time of day when the demand occurs shall be accurate to within plus or minus four (4) minutes in twenty-four (24) hours.

2. Lagged-demand meters shall be accurate to within plus or minus two (2) percent at final indication.

(3) Instrument transformers:

(a) Instrument transformers used in conjunction with metering equipment to measure customer's service shall:

1. Be in proper mechanical condition and have electrical insulation satisfactory for the service on which used.

2. Have characteristics such that the combined inaccuracies of all transformers supplying one (1) or more meters in a given installation will not exceed the following:

	100% Power Factor		50% Power Factor	
	10% Current	100% Current	10% Current	100% Current
Purchased after Jan. 1, 1942	1%	.75%	3%	2%
Purchased prior to Jan. 1. 1942	2%	1.50%	5%	3%

(b) Meters used in conjunction with instrument transformers shall be adjusted so that the over-all accuracies will come within the limits specified in this regulation.

(c) Instrument transformers shall be tested with the meter with which they are associated by making an over-all test, or may be checked separately. If the transformers are tested separately, the meters shall also be checked to see that the over-all accuracy of the installation is within the prescribed accuracy requirements.

(d) The results of tests of instrument transformers shall be kept on record and be available for use during the life of the transformer.

(e) Phase shifting transformers shall have secondary voltages under balanced line voltage conditions within one (1) percent plus or minus of the voltage impressed on the primary.

Section 18. Location of Meters. (1) Meters shall be installed in a clean, dry, safe, convenient place as free as possible from vibration. Meters shall be easily accessible for reading, testing, and making necessary adjustments and repairs, and where indoor type meters are necessary they shall not be placed in coal or wood bins or on the partitions forming same, nor on any unstable supports. Unless absolutely unavoidable, meters shall not be installed in attics, sitting rooms, bathrooms, bedrooms, restaurant kitchens, over doors, over windows, or in any location where the visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility.

(2) Districts subject to flood are excepted from this rule as far as it applies to the location of meters.

(3) Proper provision shall be made by the customer for the installation of the utility's meter. Unless the meter is to be mounted upon a panel or installed within a cabinet, such provision shall consist of a board not less than three-quarters (¾) of an inch in thickness which shall be mounted not less than five (5) or not more than seven (7) feet from the floor, and in general as near as possible to the point of entrance of the service. At least six (6) inches clear space shall be available, on all sides of the meter board and not less than thirty (30) inches in front of it. The above provisions as to method of mounting and height from floor do not apply to the installation of outdoor meters of the weatherproof type. Electric meters shall not be installed in close proximity to either water or gas meters or anything liable to cause damage to the meter, thereby constituting a hazard to customer's safety and continuous service.

(4) When more than one (1) meter is installed without a meter cabinet in the same building, proper space shall be allotted and provision made by the customer for locating the meters at one (1) place. When a number of meters are placed in the same cabinet or upon the same board, each meter shall be tagged or marked to indicate the circuit metered by it.

Section 19. Overhead and Underground Wire Entrances. (1) The overhead wire entrance shall be located on the exterior of the building nearest the utility's lines at a point not less than twelve (12) nor more than thirty (30) feet above the ground. When proper ground clearance cannot be obtained due to height of building, a proper supporting structure shall be provided by the customer unless arrangements can be made with the utility whereby their overhead service wires can be carried to the building in such a manner that these wires will not constitute an obstruction to the free passage of vehicles or fire fighting apparatus.

(2) Approval shall be obtained from the utility as to the proper location for a service entrance.

(3) New service entrances, both overhead and underground, shall be installed in accordance with the National Electric Safety Code and the National Electrical Code heretofore adopted.

Section 20. The Operation of Illegal Gambling Devices. (1) When an electric utility, subject to the jurisdiction of this commission, is notified in writing by a federal or state law enforcement agency, or by the Attorney General of Kentucky or by a Commonwealth's Attorney or by a County Attorney acting in his official capacity, that the electric energy furnished by it is being used or will be used for the purpose of operating an illegal gambling device, it shall discontinue rendering electric service to such customer, after reasonable notice to the customer, but no damages, penalty or forfeiture, civil or criminal, shall be found against any electric utility for any act done in compliance with any such notice received from the law enforcement agency or officer. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate judicial determination that such service should not be discontinued, or should be restored.

(2) As provided by KRS 278.230, any electric utility subject to the jurisdiction of this commission shall furnish to the commission on its demand any records or information in the possession of such electric utility that may assist in the enforcement of this rule.

Section 21. Undergound Electric Distribution Systems for New Residential Subdivisions. (1) Purpose of rules. To formulate requirements for underground electric distribution systems in new residential subdivisions, which will insure safe and adequate service and which will be uniformly applicable within a utility's service area.

(2) Applicability. New residential subdivisions as defined below after the effective date of this rule.

(3) Definitions. The following words and terms, when used in these rules, shall have the meaning indicated:

(a) Applicant: the developer, builder or other person, partnership, association, corporation or governmental agency applying for the installation of an underground electric supply system.

(b) Building: a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed for less than five (5) family occupancy.

(c) Multiple-occupancy buildings: a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.

(d) Distribution system: electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.

(e) Subdivision: a tract of land which is divided into ten (10) or more lots for the construction of new residential buildings, or for the construction of two (2) or more new multiple occupancy buildings.

(4) Rights of way and easements:

(a) The utility shall construct, own, operate and maintain distribution lines only along easements, public streets, roads and highways which are by legal right accessible to the utility's equipment and which the utility has the legal right to occupy, and on the public lands and private property across which rights of way and easements satisfactory to the utility may be obtained without cost or condemnation by the utility.

(b) Rights of way and easements suitable to the utility for the underground distribution facilities must be furnished by the applicant in reasonable time to meet service requirements. The utility may require that the applicant make the area in which the underground distribution facilities are to be located accessible to the company's equipment, remove all obstructions from such area, stake to show property lines and final grade, perform rough grading to a reasonable approximation of final grade, and maintain clearing and grading during construction by the utility. The utility may require that suitable land rights be granted to it, obligating the applicant and subsequent property owners to provide continuing access to the utility for operation, maintenance or replacement of its facilities, and to prevent any encroachment in the utility's easement or substantial changes in grade or elevation thereof.

(5) Installation of underground distribution system within new subdivision:

(a) Where appropriate contractual arrangements have been made, the utility shall install within the subdivision an underground electric distribution system of sufficient capacity and suitable materials which, in its judgment, will assure that the property owners will receive safe and adequate electric service for the foreseeable future.

(b) Facilities required to be underground:

1. All single phase conductors installed by the utility shall be undergound. Appurtenances such as transformers, pedestal-mounted terminals, switching equipment and meter cabinets may be placed above ground.

2. Three (3) phase primary mains or feeders required within a subdivision to supply local distribution or to serve individual three (3) phase loads may be overhead unless underground is required by governmental authority or chosen by the applicant, in either of which case the differential cost of underground shall be borne by the applicant.

(c) If the applicant has complied with the requirements herein and with the utility's specifications on file with the commission, and has given the utility not less than 120 days written notice prior to the anticipated date of completion (i.e., ready for occupancy) of the first building in the subdivision, the utility shall complete the installation thirty (30) days prior to the estimated completion date. (Subject to weather and ground conditions and availability of materials and barring extraordinary or emergency circumstances beyond the reasonable control of the utility.) However, nothing in these regulations shall be interpreted to require the utility to extend service to portions of the subdivisions not under active development.

(6) Schedule of charges:

(a) Within sixty (60) days after the effective date of these rules, each utility shall file with the commission a state-

ment setting forth the utility's policy with respect to electric underground extensions in residential subdivisions. Such policy shall provide for a payment to be made by the applicant for the purpose of giving effect to the difference between the cost of providing underground facilities and that of providing overhead facilities. The payment to be made by applicant shall be expressed in terms of an amount per foot of conductor or other appropriate measure.

(b) The utility's policy as filed with the commission shall set forth an "estimated average cost differential," if any, between the average or representative cost of underground distribution systems in residential subdivisions and of equivalent overhead distribution systems within the utility's service areas. The payment to be made by the applicant as provided for in paragraph (a) above shall not be more than such estimated average cost differential and shall be non-refundable.

(c) Detailed supporting data used to determine the estimated average cost differential shall be concurrently filed by the utility with the commission and shall be updated annually.

(d) The applicant may be required to deposit the entire estimated cost of the extension. If this is done, the amount deposited in excess of the normal charge for underground extensions, as provided in paragraph (a) above, shall be refunded to the applicant over a ten (10) year period as provided in Section 11.

(e) Upon agreement by both parties, if the applicant should choose to perform all necessary trenching and backfilling in accordance with utility specifications, the utility shall credit the applicant's cost in an amount equal to the utility's cost for trenching and backfilling.

(f) Utility extension from the boundary of the subdivision to its existing supply facilities shall normally be made overhead; and any deposit required therefor is subject to refund under Section 11. Upon request, such extension may be made underground, if the applicant agrees to pay the excess cost for the underground extension, which excess cost shall be non-refundable.

(g) 1. Point of service shall be that point where the facilities of the utility join the customer's facilities, irrespective of the location of the meter and such point of service will normally be either at the property line or at the corner of the building nearest the point at which the underground systems enter the property to be served, depending upon whether the utility or the customer owns the underground service lateral.

2. If established utility practice dictates service termination at the customer's property line, the utility shall credit the applicant fifty dollars ($50) or the equivalent cost of an overhead service line to the applicant's meter base, whichever is greater.

3. Where established utility practice does not dictate service termination at the customer property line, the utility shall include in its underground plan, the furnishing, installation, ownership, and maintenance of the service lateral to the meter base providing the applicant installs in the building adequate electric service entrance capacity to the satisfaction of the utility to assure that the underground service conductors will be adequate to handle present and future load requirements of the building; and in this instance the utility will determine the size and type of the service lateral conductors and appurtenances to be used in any installation.

4. If, by mutual agreement of the parties, service terminates at some other point on the building or property, the applicant shall pay the full cost of any additional extension required in excess of that provided for in paragraph (g)1, 2 and 3 of this subsection.

(h) When an existing utility-owned supply circuit or service lateral requires replacement or reinforcement due to added loads, etc., the utility at its expense will replace or reinforce it.

(i) Nothing herein contained shall be construed to prevent any utility from assuming all or any part of the cost differential of providing underground distribution systems within subdivisions, provided the utility demonstrates to the satisfaction of the commission that such practice will not result in increased rates to the general body of rate payers.

(j) The utility shall not be obligated to install any facility within a subdivision until satisfactory arrangements for the payment of charges have been completed by the applicant.

(7) Cooperation by applicant. The charges specified in these rules are based on the premise that each applicant will cooperate with the utility in an effort to keep the cost of construction and installation of the underground electric distribution system as low as possible and make satisfactory arrangements for the payment of the above charges prior to the installation of the facilities.

(8) Construction. All electrical facilities shall be installed and constructed to comply with applicable codes and the rules and regulations of the commission.

Section 22. Deviations from Rules. In special cases for good cause shown applications to and approval by, the commission may permit deviations from these rules.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:046. Prohibition of master metering.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.010(4)(a), 278.040(3), 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service by any utility. This regulation requires electric utilities to meter new buildings individually pursuant to the federal standard established by Section 113(b)(1) of the Public Utility Regulatory Policies Act of 1978.

Section 1. Definitions. (1) "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or a sleeping place by one (1) or more persons maintaining a common household.

(2) "Multi-dwelling unit building" means a structure with two (2) or more dwelling units.
(3) "High rise building" means a building with more than four (4) stories.

Section 2. Individual Meters Required. An individual electric meter to record the retail sales of electricity shall be installed for each newly constructed dwelling unit in a non-transient multi-dwelling unit residential building, a mobile home park, or a commercial building for which the building permit application is made after May 31, 1981.

Section 3. Exclusions. Individual unit metering will not be required for: (1) Transient multi-dwelling buildings including, but not limited to hotels, motels, campgrounds, hospitals, nursing homes, convalescent homes, college dormitories, fraternities, sororities, boatdocks, and mobile homes without a permanent foundation and which is not connected to sanitation facilities.
(2) Commercial unit spaces where the commercial unit space requirements are subject to alteration with a change in tenants as evidenced by temporary versus permanent type of wall construction.
(3) Electricity used in central heating, ventilating, and air conditioning systems.
(4) Electricity used in high rise buildings.

Section 4. Complaints. Applicants for electric service who desire master metering of electricity in a building for which master metering is prohibited may make a formal complaint to the commission as provided in 807 KAR 5:001, Section 11. The applicant shall have the burden of proving that the costs of purchasing and installing separate meters in the building are greater than the long-run benefits of individual metering to the consumers of the electricity at the building.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
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PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:051. Electric consumer information.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.040, 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the Commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation requires electric utilities to provide certain information to their consumers pursuant to the federal standard established by Section 113(b)(3) of the Public Utility Regulatory Policies Act of 1978.

Section 1. General. The purpose of this regulation is to require retail electric utilities to provide their consumers with information concerning changes in rate schedules.

Section 2. Rate Schedule Information. Each electric utility shall transmit to each of its consumers a clear and concise explanation of any proposed change in the rate schedule applicable to the consumer.
(1) When an electric utility proposes a change in a rate schedule, the statement explaining it shall be transmitted to each consumer to which the change applies within thirty (30) days after the utility applies for that change or within sixty (60) days in the case of an electric utility which uses a bi-monthly billing system.
(2) The statement explaining a proposed rate change may be included with the regular bill.

MARLIN M. VOLZ, Chairman
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PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:056. Fuel adjustment clause.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.030(1)
NECESSITY AND FUNCTION: KRS 278.030(1) provides that all rates received by an electrical utility subject to the jurisdiction of the Public Service Commission shall be fair, just and reasonable. This regulation prescribes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subject to later scrutiny by the Public Service Commission.

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses which are not in conformity with the principles set out below are not in the public interest and may result in suspension of those parts of such rate schedules:
(1) The fuel clause shall provide for periodic adjustment per KWH of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$\text{Adjustment Factor} = \frac{F(m)}{S(m)} - \frac{F(b)}{S(b)}$$

Where F is the expense of fossil fuel in the base (b) and current (m) periods; and S is sales in the base (b) and current (m) periods, all as defined below.
(2) FB/SB shall be so determined that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment will be equal to zero (0).
(3) Fuel costs (F) shall be the most recent actual monthly cost of:
(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel which would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (c) below, but excluding the cost of fuel related to purchases to substitute the forced outages; plus

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis. Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy; and less

(d) The cost of fossil fuel recovered through inter-system sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

(e) All fuel costs shall be based on weighted average inventory costing.

(4) Forced outages are all nonscheduled losses of generation or transmission which require substitute power for a continuous period in excess of six (6) hours. Where forced outages are not as a result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. Until such approval is obtained, in making the calculations of fuel cost (F) in subsection (3)(a) and (b) above the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation.

(5) Sales (S) shall be all KWH's sold, excluding inter-system sales. Where, for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of (i) generation, (ii) purchases, (iii) interchange-in, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in subsection (3)(d) above, less (vi) total system losses. Utility used energy shall not be excluded in the determination of sales (S).

(6) The cost of fossil fuel shall include no items other than the invoice price of fuel less any cash or other discounts. The invoice price of fuel includes the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees.

(7) At the time the fuel clause is initially filed, the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options or similar such documents, and all amendments and modifications thereof related to the procurement of fuel supply and purchased power. Incorporation by reference is permissible. Any changes in the documents, including price escalations, or any new agreements entered into after the initial submission, shall be submitted at the time they are entered into. Where fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall be noted and the utility shall explain and justify them in writing. Fuel charges which are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause. The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this regulation.

(8) Any tariff filing which contains a fuel clause shall conform that clause with this regulation within three (3) months of the effective date of this regulation. The tariff filing shall contain a description of the fuel clause with detailed cost support.

(9) The monthly fuel adjustment shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment which shall include data and information as may be required by the commission.

(10) Copies of all documents required to be filed with the commission under this regulation shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 to 61.884.

(11) At six (6) month intervals, the commission will conduct public hearings on a utility's past fuel adjustments. The commission will order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments it finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

(12) Every two (2) years following the initial effective date of each utility's fuel clause the commission in a public hearing will review and evaluate past operations of the clause, disallow improper expenses and to the extent appropriate re-establish the fuel clause charge in accordance with subsection (2) of this section.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
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SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:061. Telephone.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishings of any commodity by the utility. This regulation establishes general rules which apply to telephone utilities.

Section 1. General Provisions. This regulation governs the furnishing of intrastate telephone service and facilities to the public by telephone utilities subject to the jurisdiction of the commission. The purpose of these rules is to set forth reasonable service standards and procedures to the end that adequate and satisfactory service will be rendered to the public.

Section 2. Acceptable Standards. Unless otherwise specified by the commission, the utility shall use the applicable provisions in the following publications as standards of accepted good engineering practice for the con-

struction and maintenance of plant and facilities, herein incorporated by reference:

(1) National Electric Safety Code; ASA C-2 1981 Edition;

(2) National Electrical Code; NFPA 70 or ANSI C-1, 1981 Edition.

Section 3. Definitions. In the interpretation of this regulation, the following definitions shall be used:

(1) "Commission" means the Public Service Commission.

(2) "Telephone utility" means any person, firm, partnership, cooperative, organization or corporation engaged in furnishing of telephone service to the public under the jurisdiction of the commission.

(3) "Customer or subscriber" means any person, firm, partnership, corporation, municipality, cooperative, organization or governmental agency provided with telephone service by any telephone utility.

(4) "Exchange" means a geographical area established by a telephone utility for the administration of telephone service. It usually embraces a city, town, or village and its environs. It consists of one or more central offices together with associated plant used in furnishing communication service in that area.

(5) "Central office" means a unit of a telephone utility, including the switching equipment and appurtenant facilities used to establish connections between customer lines or between customer's lines and trunk or toll lines to other central offices within the same or at other exchanges.

(6) "Outside plant" means the telephone equipment and facilities installed on, along, over or under streets, alleys, highways, or on private rights-of-way between the central office and customer's location or between central offices.

(7) "Subscriber line" means the wires or channels used to connect the telephone equipment at the subscriber's premises with the central office.

(8) "Class of service" means the various categories of telephone service generally available to customers, such as business or residence.

(9) "Grade of service" means the number of parties served on a telephone line such as one-party, two-party, four-party, etc.

(10) "Service line" means those facilities owned and maintained by a customer or group of customers which lines are connected with the facilities of a telephone utility at an agreed point for communication service.

(11) "Farmer line" (see service line).

(12) "Message" means a completed customer telephone call.

(13) "Calls" means customer's telephone messages attempted.

(14) "Customer trouble report" means any oral or written report from a subscriber or user of telephone service relating to a physical defect or difficulty with the operation of telephone facilities. One (1) report shall be counted for each oral or written report received even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. Also, a separate report shall be counted for each telephone or PBX switchboard position reported in trouble when several items are reported by one (1) customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(15) "Tariff" means the entire body of rates, tolls, rentals, charges, classifications, regulations and rules, adopted by a public utility in accordance with the laws governing the provisions of public utility service.

(16) "Base rate area" means the developed portion or portions within each exchange service area as set forth in the telephone utility's tariffs, maps or descriptions. Main station service within this area is furnished at uniform rates without mileage charges.

(17) "Average busy season; busy hour traffic" means the average traffic volume for the busy season, busy hours.

(18) "Busy hour" means the two (2) consecutive half-hours during which the greatest volume of traffic is handled in the office.

(19) "Busy season" means that period of the year during which the greatest volume of traffic is handled in the office.

(20) "Switching service" means switching performed for service lines.

(21) "Toll connecting trunks" means a general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office.

(22) "Toll station" means a telephone and associated equipment connected to a toll line or directly to a toll board.

(23) "Direct distance dialing (DDD)" means customer dialing over the nationwide intertoll telephone network of calls to which toll charges are applicable. No operator assistance is required for DDD calls.

(24) "Regular or 'basic' service" includes all one (1), two (2), four (4) and multiparty primary and extension service.

(25) "Special service" means unusual and complex services such as data terminals, teletypewriter, full period circuits, wide area telephone service (WATS), or other items that require special engineering, installation or manufacturing to provide the service.

(26) "Extended area service (EAS)" means extension of a major exchange area to include other surrounding exchange areas. Toll-free dialing is permitted within the extended area in return for metropolitan area rates.

(27) "Intercept service" means a service arrangement provided by the utility whereby calls placed to a disconnected, discontinued, or improperly listed telephone number are intercepted and the calling party is informed that the called telephone number has been disconnected, discontinued, changed, etc., or that calls are being received by another telephone. This may be accomplished by recording or by operator.

(28) "Regrade" means an application for a different class and/or grade of service.

(29) "Traffic" means telephone call volume, based on number and duration of messages.

(30) "Service objectives," as construed in these regulations, shall mean a designated number or percentage, applicable to the various service measures, the maintenance of which shall indicate a minimum satisfactory level of service. Each utility shall maintain records of the various service measurements by exchange or district, and shall submit a summary of said records to the commission monthly. If performance by the utility falls below the service objective for two (2) consecutive months, the utility shall also submit to the commission a report by exchange or district setting forth the action taken or planned to correct same.

Section 4. Switching Service. Telephone companies shall not provide switching service to service lines except to dangerous, inaccessible, restricted or remote areas. In such cases the service lines shall meet appropriate technical criteria so as not to impair or interfere with the service of others, or adversely affect the facilities of the telephone company.

Section 5. Basic Utility Obligations. (1) Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed the standards set forth in this regulation.

(2) Each telephone utility has the obligation of continually reviewing its operations to assure the furnishing of adequate service.

(3) Each telephone utility shall maintain records of its operations in sufficient detail as is necessary to permit such review, and such records shall be made available for inspection by the commission upon request.

(4) Where a telephone utility is generally operated in conjunction with any other enterprise, suitable records shall be maintained so that the results of the telephone operation may be determined upon reasonable notice and request by the commission.

Section 6. Directories. (1) Telephone directories shall be published at least yearly for each exchange listing the name, address and telephone numbers of all customers, except public telephones and numbers unlisted at a customer's request, who can be called within the service area without a long distance charge.

(2) Upon issuance, a copy of each directory shall be distributed by each utility to all its customers served by that directory, and a copy of each directory shall be furnished the commission.

(3) The name of the telephone utility, the area included in the directory and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.

(4) The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company business offices as may be appropriate to the area served by the directory. Rates between frequently called points may also be included.

(5) (a) Information operators shall have access to records which include all listed telephone numbers (except public telephones and numbers that are nonpublished at the customer's request) in the area for which they are responsible for furnishing information service.

(b) Intercept operators shall have access to records which indicate the status of all telephone numbers in the area for which they are responsible for furnishing intercept service.

(6) In the event of an error in the listed number of any customer, the telephone utility shall intercept all calls to the listed number for a ninety (90) day period of time provided the number is not in service. In the event of an error or omission in the name listing of a customer, such customer's correct name and telephone number shall be in the files of the information or intercept operators and the correct number furnished the calling party either upon request or interception.

(7) Whenever any customer's telephone number is changed after a directory is published, the utility shall intercept all calls to the former number for a ninety (90) day period of time, and give the calling party the new number if the customer so desires.

(8) When additions or changes in plant, records or operations which will necessitate a large group of number changes are scheduled, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

Section 7. Exchange Maps. (1) Each telephone utility shall file exchange maps with the commission showing the exchange service area for each telephone exchange operated, and the maps shall be in sufficient detail to reasonably permit locating the exchange service area boundaries in the field. A copy of such map shall be included in the utility's tariff, in accordance with the requirements of 807 KAR 5:011.

(2) With every revised map, the telephone utility so filing shall submit proof of notice of the proposed revision to each telephone utility whose exchange area adjoins the exchange area boundary lines or is located reasonably near the territory which would be changed by such revisions. This shall include provision for the signature of an official of each telephone utility concerned on the copy of the exchange maps filed with the commission.

Section 8. Tariffs. Each telephone utility shall file with its tariff the various exchange areas, base rate areas, the conditions and circumstances under which service will be furnished and a definition of the classes and grades of service available to customers, in accordance with 807 KAR 5:011.

Section 9. Extensions of Service. (1) The utility shall extend service to applicants within the base rate area without a construction charge except in cases of special requirements.

(2) Each telephone utility shall make an extension of 750 feet or less, free of charge, from existing plant facilities to provide multiparty service to applicants who shall apply for and contract to use the service for one (1) year or more and provide a guarantee for such service. Not more than 250 feet of the extension shall be over private property. However, when the extension over private property will be used to serve customers in general or the private property routing is selected by the utility, such construction shall be treated as being on public property and the full extension if required shall be made.

(3) Other extensions:

(a) 1. When an extension to serve an applicant or a group of applicants amounts to more than 750 feet per applicant, the utility may, if not inconsistent with their filed tariff, require the total cost of the excessive footage over 750 feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

2. Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a period of not less than ten (10) years, which for the purpose of this rule shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage the cost of 750 feet of the extension in place for each additional customer connected to the extension installed and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period, no refund will be required to be made.

(b) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 750 feet of the extension installed for each additional customer connected during the year, but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund will be required to be made.

(4) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(5) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 750 feet upon a finding by the commission that such extension is reasonable.

(6) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by order of the commission.

Section 10. Grade of Service. (1) Within the base rate area, no telephone utility shall place more than four (4) customers on any local exchange line. Within the service area no telephone utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line.

(2) On rural lines where multiparty service is provided no more than eight (8) customers shall be connected to any one (1) circuit. The telephone utility may regroup customers in such a manner as may be necessary to carry out the provisions of this rule.

Section 11. Provision of Service. (1) It shall be the service objective of all utilities to fulfill ninety (90) percent of requests for regular service within five (5) working days of the receipt of the request unless the applicant specifically requests a later date.

(2) The service objective for regular regrades shall be to fulfill ninety (90) percent of requests within thirty (30) days unless the applicant specifically requests a later date.

(3) Applications for special service shall be filled in as expeditious manner as equipment and facilities will permit.

(4) All applications which are not filled within five (5) working days for initial regular service and within thirty (30) days for regular regrades shall be considered as held applications.

(5) When because of circumstances beyond the control of the utility it is not possible to provide service within the time limits specified above, the utility shall promptly notify the applicant of the reason for the delay and give him a commitment date based upon the best available information. Utility personnel shall refrain from making unwarranted commitments without first having ascertained that they can reasonably be met.

(6) It shall be the service objective of all utilities to meet ninety-four (94) percent of all commitments made, except for customer caused delays and Acts of God.

(7) In those instances where commitments cannot be met, the applicant shall be notified at the earliest possible time.

(8) Additionally, the utility shall keep a record by exchanges showing the name and address of each applicant for service, the date of application, date service desired, the class and grade of service applied for, together with the reason for the inability to provide the new or regrade service to the applicant.

(9) When, because of shortage of facilities, a utility is unable to supply telephone service on dates requested by applicant, first priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the commission may require establishment of a priority plan subject to its approval for clearing held orders, and may request periodic reports concerning the progress being made.

Section 12. Public Telephone Service. In each exchange, the telephone utility shall supply at least one (1) coin telephone that will be available to the public on a twenty-four (24) hour basis. This coin telephone shall be located in a prominent location in the exchange and shall be lighted at night. The utility shall also establish other public telephone service at locations where the public convenience will be served.

Section 13. Discontinuance of Service. (1) When a telephone utility, subject to the jurisdiction of this commission, is notified in writing by this commission or by a federal or state law enforcement agency, or by the Attorney General of Kentucky or by a commonwealth's attorney or by a county attorney acting within its or his apparent jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber. But no damages, penalty or forfeiture, civil or criminal, shall be recovered from any telephone utility for any act done in compliance with any notice received from the commission or law enforcement agency.

(2) Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate judicial determination that such facility should not be discontinued or removed, or should be restored.

(3) As provided by KRS 278.230, any telephone utility subject to the jurisdiction of this commission shall furnish to the commission on its demand any records or information in the possession of such telephone utility that may assist the commission in the enforcement of this rule.

(4) Nothing herein shall be construed to prevent the transmission of information for use in legitimate news reporting of sporting events or contests by recognized news media.

Section 14. Customer Billing. Bills to customers shall be rendered regularly and shall contain clear listings of all charges. The utility shall comply with reasonable customer requests for an itemized statement of charges. All toll charges shall be itemized separately.

Section 15. Adequacy of Service. (1) Each utility shall employ recognized engineering and administrative procedures to determine the adequacy of service being provided to the customer.

(2) Traffic studies shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment and an adequate operating force are provided at all times including the busy hour, busy season.

(3) Each telephone utility shall provide operator assistance on a twenty-four (24) hour per day basis for both local and long distance service.

(4) Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept up to date and checked periodically to determine if adjustments are necessary to maintain proper balance in all groups.

Section 16. Dial Service Requirements. Sufficient central office capacity and equipment shall be provided to

meet the following minimum requirements at all times including busy season-busy hour:

(1) Dial tone within three (3) seconds on at least ninety-five (95) percent of telephone calls.

(2) Complete dialing of called numbers on at least ninety-five (95) percent of telephone calls without encountering an equipment or all-trunk busy condition within the local dialing area.

(3) Each utility shall employ appropriate procedures to determine the adequacy of central office equipment and local inter-office and EAS trunks.

Section 17. Grounded Circuits. No telephone lines shall be construed as single wire with ground return. Any existing ground return telephone lines shall be converted to metallic or equivalent circuits.

Section 18. Metallic Circuits. Telephone utilities shall provide full metallic telephone circuits or equivalent for all customers.

Section 19. Toll Connecting Trunks. Sufficient toll connecting or inter-exchange trunks shall be provided so that at least ninety-seven (97) percent of telephone calls offered to the group will not encounter an all trunks busy condition.

Section 20. Transmission Requirements. Telephone utilities shall furnish and maintain adequate plant equipment and facilities to provide satisfactory transmission of communications between customers in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and cross-talk shall be such as not to impair communications.

Section 21. Minimum Transmission Objectives. (1) The transmission objectives set forth herein are based upon the use of standard telephone sets connected to a forty-eight (48) volt dial central office and measured at a frequency of 1,000 cycles.

(2) Subscriber lines shall, in general, have a loop resistance not exceeding the operating design of the associated central office equipment.

(3) Telephone utilities shall have as their objective the design of subscriber loops having a transmission loss of no more than eight and five-tenths (8.5) decibels.

(4) The overall transmission loss, including terminating equipment, on local interoffice trunks shall be no more than seven (7) decibels.

(5) Whenever feasible, the overall transmission loss, including terminating equipment, on intertoll trunks and terminating links shall be no more than five (5) decibels. Because these trunks may be only one of several connected links, on some toll routes it may be necessary to provide better facilities of high grade in order to keep overall net circuit losses within reasonable limits and to provide satisfactory message transmission.

Section 22. Provisions for Testing. Each telephone utility shall provide test facilities which will enable it to determine the operating and transmission capabilities of circuit and switching equipment, either for routine maintenance or for fault location.

Section 23. Selective Ringing. Each telephone utility shall provide full selective ringing to all subscribers.

Section 24. Traffic Rules. (1) Suitable practices shall be adopted by each telephone utility concerning the operating methods to be employed by operators with the objective of providing efficient and agreeable service to the customers.

(2) Telephone operators shall be instructed to be courteous, considerate and efficient in the handling of all calls, and to comply with the provisions of the Communications Act of 1934 in maintaining the secrecy of communications.

(3) All operator-handled calls shall be carefully supervised and disconnects made promptly.

(4) When an operator is notified by a customer that he has reached a wrong number on a direct dialed call, the customer shall be given credit on his bill when the claim has been substantiated.

Section 25. Answering Time. (1) Adequate forces shall be provided for toll and for operator assistance calls to meet the service objective so that ninety (90) percent of the calls will be answered within ten (10) seconds.

(2) The service objective for calls to the business office, and repair service shall be ninety (90) percent within twenty (20) seconds.

(3) The service objective for operator number identification (ONI) on toll calls where ONI is not available shall be ninety (90) percent within five (5) seconds.

(4) The utility shall use sufficient quantities of measuring devices to accurately monitor the above service indices.

Section 26. Maintenance of Plant and Equipment. (1) Each telephone utility shall adopt and pursue a preventative maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe, adequate and continuous service at all times.

(2) Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance. Broken, damaged or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive maintenance not to be in operating condition. Electrical faults, such as leakage or poor insulation, noise induction, cross-talk, or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected.

(3) The utility shall maintain records descriptive of its preventative maintenance program indicating work accomplished and planned, which is carried out on a routine periodic basis, for the various categories of equipment and plant.

(4) Work performed in response to trouble is not considered preventative maintenance.

Section 27. Emergency Operations. (1) Each telephone utility shall make reasonable provisions to meet emergencies resulting from failures of lighting or power service, sudden and prolonged increase in traffic, illness of operators, or from fire, storm, or Acts of God, and each telephone utility shall inform employees as to procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of telephone service.

(2) It is essential that all central offices and toll centers have adequate provision for emergency power. Each central and/or toll office shall have a minimum of four (4) hours of battery reserve. In exchanges exceeding 5,000 lines and in toll offices, a permanent auxiliary power unit shall be installed. In offices without installed emergency power facilities there shall be a mobile power unit available

of suitable capacity which can be delivered and connected wihin two (2) hours, or one-half (½) the battery reserve time, whichever is greater.

Section 28. Service Interruption. (1) Each telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall re-establish service with the shortest possible delay, regardless of weekends or holidays.

(2) Arrangements shall be made to receive customer trouble reports twenty-four (24) hours daily and to clear trouble of an emergency nature at night, as well as during regular working hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

(3) Each telephone utility shall maintain an accurate record of trouble reports made by its customers. This record shall include appropriate identification of the customer, of service affected, the time, date and nature of the report, the action taken to clear trouble or satisfy the complaint, and the date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request, and shall be retained for a minimum time of one (1) year.

(4) The service objective shall be to clear ninety-five (95) percent of out-of-service troubles, not requiring unusual repair such as cable failures, within twenty-four (24) hours of the report received by the utility, unless the customer specifically requests a later time.

(5) Non-out-of-service maintenance items reported by customers such as frayed cords, etc., not affecting the utilization of the telephone equipment may be scheduled for correction within a reasonable time so as to achieve economies in the dispatching of service personnel.

(6) All commitments to customers shall be kept, unless customers are timely notified of unavoidable delays. If unusual repairs are required, or other factors preclude clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

(7) It shall be the service objective to so maintain the service that the average rate of customer trouble reports in an exchange is no greater than eight (8) per 100 telephones per month.

(8) When a customer's telephone is reported or found to be out of order. It shall be restored to service as promptly as possible, but in the event it remains out of order in excess of twenty-four (24) consecutive hours, after the utility has notice thereof, the utility shall refund to the customer upon request the pro rata part of that month's charges for the period of days during which the telephone was out of order. This refund may be accomplished by a credit on a subsequent bill for telephone service.

Section 29. Construction Work near Utility Facilities. Even though all contractors working in the vicinity of utility lines or structures are responsible for exercising due diligence in preventing damage to utility property or interruption to utility services, telephone utilities shall, when requested, furnish to contractors appropriate information concerning location of underground conduit, cable, and other equipment in order to prevent any interruption of service to telephone customers. Nothing in this rule is intended to affect the responsibility, liability or legal rights of any party under applicable laws or statutes.

Section 30. Customer Service. A customer may be required to take service of a different type or insufficient quantity if the use of service interferes unreasonably with the necessary service of other customers.

Section 31. Deviations from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:066. Water.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This regulation establishes general rules which apply to water utilities.

Section 1. General. The purpose of this regulation is to provide standard rules and regulations governing the service of water utilities operating under the jurisdiction of the Public Service Commission.

Section 2. Definitions. (1) "Meter" means any device used for the purpose of measuring the quantity of water delivered by a utility to a customer.

(2) "Transmission main" means a line which is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.

(3) "Distribution main" means a line from which service connections with customers are taken at frequent intervals.

(4) "Service line" means the line from the property line to the place of consumption.

(5) "Service connection" means the line from the main to the customer's property line, and shall include all of the pipe fittings and valves necessary to make the connection.

(6) "Department for Natural Resources" means the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Sanitary Engineering.

Section 3. Information Available to Customers. (1) Characteristics of water. A description in writing of the treated water as to chemical constituents and bacteriological standards.

(2) Rates. A schedule of rates for water service applicable to the service to be rendered to the customer.

(3) Reading meters. Information about method of reading meters.

(4) Bill analysis. A statement of the past readings of a customer's meter for a period of two (2) years.

Section 4. Quality of Water. (1) General. Any utility furnishing water service for human consumption or for

domestic uses shall provide water that is wholesome, potable, free from objectionable odors and taste, and not harmful or dangerous to public health.

(2) Compliance with Department for Natural Resources. Any utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the Department for Natural Resources for construction and operation of its water system as pertains to sanitation and potability of the water.

(3) Water supply. In absence of comparable requirements of the Department for Natural Resources, water supplied by any utility shall be:

(a) Adequately protected by artificial treatment to include continuous disinfection throughout the distribution system.

(b) Free from objectionable color, turbidity, taste, and odor.

(c) From a source reasonably adequate to provide a continuous supply of water.

(d) Of such quality at all times as to meet the "Public Health Service Drinking Water Standards," Revised 1962 edition, Publication No. 956, U. S. Government Printing Office, Washington, D. C. 20402; herein filed by reference.

(4) Operation of supply system:

(a) The water supply system, including wells, reservoirs, pumping equipment, treatment works, mains, and service pipes shall be free from sanitary defects.

(b) No physical connection between the distribution system of a public potable water supply and that of any other water supply shall be permitted, unless such other water supply maintains a safe sanitary quality in accordance with this regulation and the interconnections of the supplies are approved by the commission.

(c) The growth of algae in the water at the source of supply, in reservoirs or other basins, and in the water mains, shall be controlled by proper treatment.

(d) Utilities obtaining water supplies from driven or drilled wells must maintain the tightness of well casings and provide protection at the surface of the ground to prevent the infiltration of water other than that from the strata tapped by such wells and 300 feet from any source of pollution.

(5) Testing of water:

(a) Test. Each utility shall have representative samples of water supplied by it examined by the state or local department for natural resources or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the State Department for Natural Resources, at intervals sufficient to insure a safe water supply.

(b) Report to the commission. In the event that the above prescribed tests show that the water furnished by the utility is contaminated or otherwise unsafe for human consumption, the utility shall forward a report of such test to the commission or other state agency having correctional jurisdiction without delay, and shall take immediate steps to correct the condition.

Section 5. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public. Where an emergency interruption of service affects the service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for the fire protection.

(2) Scheduled interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interrruptions shall be made at such hours as will provide least inconvenience to the customers. Where public fire protection is provided by the mains affected by the interruptions, the utility shall notify the fire chief or other officials responsible for fire protection, of the interruption, stating the time and anticipated duration. The fire chief or other official responsible for fire protection shall be notified immediately upon restoration of service.

(3) Standby equipment. When the system pressure is maintained by mechanical means, emergency standby pumping equipment shall be provided to maintain a reasonable pressure in the main in the event of failure of the primary pumping facilities.

(4) Storage. Each utility shall provide water storage to insure a minimum of one (1) days supply of its average daily water usage or such minimum amount deemed adequate by the commission.

(5) Record of interruptions. Each utility shall keep a complete record of all interruptions on its entire system or on major divisions thereof. This record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence.

Section 6. Pressures. (1) Standard pressure. Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure." The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure a utility may divide its distribution system into districts, when division is necessary, due to differences of elevation or loss of pressure because of friction, or due to both of said causes; and may adopt a standard pressure for each such division, or it may establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty percent (50%) of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig.

(2) Pressure gauges. Each utility shall provide itself with one (1) or more recording pressure gauges for the purpose of making pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the utility's system and shall be able to record a continuous twenty-four (24) hour test. One (1) of these recording pressure gauges shall be maintained in continuous service at some representative point on the utility's mains.

(3) Pressure surveys. At least once annually, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points in its system. The pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility's principal office in the state and shall be made available to the commission upon request.

Section 7. Water Supply Measurement. (1) Measuring devices. Each utility shall install a suitable measuring device at each source of supply in order that a record may be maintained of the quantity of water produced by each source.

(2) Records. At least once each month, the quantity produced from each source of supply shall be determined. Twelve (12) month totals by sources shall be recorded and transmitted to the commission in the utility's annual report to the commission.

Section 8. Standards of Construction. The design and construction of the utility's water plant shall conform to good standard engineering practice. The plans and specifications for water supplies shall be prepared by an engineer registered in the State of Kentucky, with the submitted plans bearing the engineer's seal. The plant shall be designed and operated so as to provide adequate and safe service to its customers and shall conform to the requirements of the Department for Natural Resources with reference to sanitation and potability of water.

Section 9. Distribution Mains. (1) Depth of mains. Water mains shall be placed a minimum of twenty-four (24) inches below ground level and shall be protected sufficiently to prevent freezing during the coldest weather normally experienced in the community in which laid, and to prevent damage by traffic.

(2) Dead ends. Insofar as practicable, the utility shall design its distribution system so as to avoid dead ends in its mains. Where dead ends are necessary, the utility shall provide hydrants or valves for the purpose of flushing the mains. Mains with dead ends shall be flushed as often as necessary to maintain the quality of the water; but in any event they shall be flushed at least once each year.

(3) Segmentation of system. Valves or stopcocks shall be provided at reasonable intervals in the mains so that repairs may be affected with interruptions to the service of as few customers as is practicable.

(4) Disinfection of water mains. All new mains shall be thoroughly disinfected before being connected to the system. The method of disinfecting shall be in compliance with the Department of Natural Resources.

(5) Grid systems. Wherever feasible the distribution system shall be laid out in a grid so that in case of breaks or repairs the interruptions of service to the customers will be at a minimum.

Section 10. Service Lines. (1) Size of service line. The size, design and material and installation of the service line shall conform to such reasonable requirements of the utility as may be incorporated in its rules and regulations, provided, however, that the minimum size of the line shall not be less than three-fourths (¾) inch nominal size except under unusual circumstances which shall be clearly defined.

(2) Depth of service line. All service lines shall be laid at a depth sufficient to prevent freezing during the coldest weather normally experienced except where services are not intended for use during freezing weather and are actually drained during such periods.

(3) Inspection of service line. In the installation of a service line, the customer shall leave the trench open and pipe uncovered until it is inspected by the utility and shown to be free from any tee, branch connection, irregularity or defect.

Section 11. Construction Requirements. (1) The system shall be adequate to deliver all reasonable water requirements of its customers and meet the requirements of Section 6(1) except under emergency conditions.

(2) Distribution system:

(a) Minimum pipe sizes. The distribution system shall be of adequate size and so designed in conjunction with related facilities to maintain the minimum pressures required by Section 6(1). The maximum length of any individual small pipe line shall be as follows:

	Circulating	Non-Circulating
1 inch nominal size	150 feet	100 feet
1½ inch nominal size	300 feet	200 feet
2 inch nominal size	500 feet	250 feet

In the case of rural water lines, where hydraulic studies indicate they can comply with Section 6(1) and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with approval of the commission.

(b) Fire protection. Specifications, location, installation, and the responsibility for the maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and when owned by the utility shall be subject to such conditions as the commission may impose, based upon the compensation received for this service.

(3) Transmission systems. The transmission pipe lines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipe lines.

(4) Water supply requirements. The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption, and shall be determined so as to maintain the specified pressures as required by Section 6(1).

(5) Materials. Metallic and non-metallic materials may be used separately and in combination to construct component parts of a water system including, but not limited to, conduits, pipes, couplings, caulking materials, protective linings and coatings, services, valves, hydrants, pumps, tanks and reservoirs, provided:

(a) The material shall have a reasonable useful service life.

(b) The material shall be capable of withstanding with ample safety factors the internal and external forces to which it may be subjected in service.

(c) The material shall not cause the deterioration of the potability of the water supply.

(d) Materials and equipment shall be so selected as to mitigate corrosion, electrolysis and deterioration.

Section 12. Extension of Service. (1) Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides a guarantee for such service.

(2) Other extensions:

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a period of not less than ten (10) years, which for the purpose of this rule shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period, no refund will be required to be made.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each additional customer connected during the year but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund will be required to be made.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable.

Section 13. Service Connections. (1) Ownership of service:

(a) Utility's responsiblity. In urban areas with well-defined streets the utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service line from its main to and including the curb box, if curb box is used, otherwise to the curb stop. The curb stop may be installed at a convenient place between the property line and the curb. All services shall include a curb stop.

(b) Customer's responsiblity. The customer shall furnish and lay the necessary pipe to make the connection from the curb stop to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

(2) Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

Section 14. Measurement of Service. (1) Metering. All water sold by a utility shall be upon the basis of metered volume sales except that the utility may at its option provide flat rate or estimated service for the following:

(a) Temporary service where the water used can be readily estimated.

(b) Public and private fire protection service.

(c) Water used for street sprinkling and sewer flushing, when provided for in a contract between the utility and a municipality or other local governmental authority.

(2) Registration of meter. All meters used for metered sales shall have registration devices indicating the volume of water measured in either cubic feet or U.S. gallons. Where a constant or multiplier is necessary to convert the meter reading to cubic feet or gallons, the constant shall be indicated upon the face of the meter.

(3) Charge for service line and meter installation:

(a) No utility shall charge for the installation or the use of its portion of the service line or of any devices for metering service to a customer, except for temporary service where the utility may charge its actual cost of installation and removal of service lines and metering devices.

(b) A water district, organized under KRS Chapter 74, may, subject to the approval of the commission, make a charge or "tapping fee" for installing service to its customers. Said "tapping fee" shall include a service tap, meter, meter vault, and installation thereof.

(4) Standard method of meter and service line installation. Each utility shall adopt a standard method of installing meters and service lines and shall file with the commission a written description and/or drawings in sufficient detail that the requirements are clearly understandable. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of placing pipe for water utilization. All meters shall be set in place by the utility.

Section 15. Meter Test Facilities and Equipment. (1) Test facilities. Each utility furnishing metered water service shall provide the necessary standard facilities, instruments and other equipment for testing its meters in compliance with this regulation.

(2) Shop equipment. The utility's meter test shop shall, insofar as practicable, simulate the actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with the necessary fittings, including a quick acting valve for controlling the starting and stopping of the test and a device for regulating the flow of water through the meter under test within the requirements of this regulation. The overall accuracy of the test equipment and test procedures shall be sufficient to enable test of service meters within the requirements of this regulation. In any event the inherent overall accuracy of the equipment shall permit tests with an overall error not to exceed three-tenths of one percent (.3 of 1%).

(3) Test measurement standards:

(a) Basic standard. Measuring devices for testing meters shall consist of a calibrated tank for volumetric measure-

ment or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be certificated as to its accuracy by the commission within the preceding twenty-four (24) months. If a weight standard is used, the scales shall be tested and calibrated at least once a year and certified as to accuracy by the commission.

(b) Size of basic standards. When meters are tested by weight method, it is required that utilities whose measure of quantity is the cubic foot use test equipment capable of holding not less than two (2) cubic feet of water. Utilities whose measure of quantity is the U.S. gallon shall use equipment holding not less than twenty (20) U.S. gallons.

(c) Standard meter. By special permission of the commission, a standard meter may be provided and used by any utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated periodically to insure its accuracy within the limits required by this regulation. In any event, such test shall be made at least once each week while the standard meter is in use and a record of such tests shall be kept by the utility.

Section 16. Accuracy Requirements of Water Meters. (1) General. All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.

(2) New or repaired meters. All new meters, and all meters removed from service for repairs or test in accordance with this regulation, shall be tested as specified herein prior to being placed in service.

(a) Test flows. The test flow and normal test flow limits, for the various types of cold water meters, are as follows:

DISPLACEMENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
5/8	1/4	1 to 20
3/4	1/2	2 to 30
1	3/4	3 to 50
1 1/2	1 1/2	5 to 100
2	2	8 to 160
3	4	16 to 300
4	7	28 to 500
6	12	48 to 1000

CURRENT TYPE Nominal Meter

Size Inches	Flow Gallons per Minute	Flow Gallons per Minute
1½	7	12 to 100
2	10	16 to 160
3	15	24 to 350
4	20	40 to 600
6	30	80 to 1400
8	50	144 to 2500
10	75	224 to 3800
12	100	320 to 5800
16	150	400 to 11500

COMPOUND TYPE Nominal Meter

Size Inches	Flow Gallons per Minute	Flow Gallons per Minute
1½	½	2 to 100
2	½	2 to 160
3	1	4 to 320
4	1½	6 to 500
6	3	10 to 1000
8	4	16 to 1600
10	8	32 to 2300
12	14	32 to 3100

FIRE SERVICE TYPE Nominal Meter

Size Inches	Flow Gallons per Minute	Flow Gallons per Minute
3	2	8 to 400
4	2	8 to 700
6	4	16 to 1600
8	7	28 to 2800
10	12	48 to 4400
12	12	48 to 6400

PROPELLER-DRIVEN CURRENT TYPE

Meter Size Inches	Gallons per Minute
2	15 to 80
3	30 to 200
4	45 to 400
5	75 to 600
6	90 to 900
8	100 to 1200
10	125 to 1500
12	150 to 2000
14	250 to 2500
16	275 to 3500
18	400 to 4500
20	475 to 5500
24	700 to 8000
30	1200 to 12000
36	1500 to 16000

(b) Determination of accuracy. Meters shall be tested at the minimum test flow and at least two (2) test flows in the normal test flow limits, one (1) of which shall be not less than seventy-five percent (75%) of the rated maximum capacity of the meter and the other shall be at approximately twenty-five percent (25%) of the rated maximum capacity. No new meter shall be placed in service if it registers less than ninety-five percent (95%) of the water passed through it at the minimum test flow or over registers or under registers more than one and one-half percent (1½%) in the normal test flow limits as set out in paragraph (a) above. No repaired or reconditioned meter shall be placed in service if it registers less than eighty percent (80%) of the water passed through it at the minimum test flow or over registers or under registers more than one and one-half percent (1½%) in the normal test flow limits as set out in paragraph (a) above.

(3) As found tests. All meters tested in accordance with the rules for periodic, request or complaint tests, shall be tested in the condition as found in the customer's service prior to any alteration or adjustment in order to determine the average meter error. This test shall consist of two (2) rates of flow in the normal test flow range for that type of meter as set out in subsection (2)(a) above and the average

meter error shall be the algebraic average of the errors of the two (2) tests. (For example, a meter testing one percent (1%) fast at one (1) rate of flow and three percent (3%) slow at the other would have an average meter error of one percent (1%) slow.)

(4) Determination of meter error for bill adjustment purposes. When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's regulations, three (3) additional tests shall be made, one (1) at seventy-five percent (75%) of rated maximum capacity; one (1) at fifty percent (50%) of rated maximum capacity; one (1) at twenty-five percent (25%) of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

Section 17. Periodic Tests. (1) Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified in the following table:

Size of Meter Inches	Interval Between Tests Years
5/8	5
3/4	5
1	5
1 1/4	4
1 1/2	4
2	4
3	2
4 and larger	1

(2) "Periodic test periods" for testing meters in the systems of utilities supplying water of high turbidity, or of peculiar characteristics, will be determined by the commission from time to time.

(3) Meters of the current and compound type shall be cleaned at least once each year. When filtered or exceptionally clear water is delivered, the interval between cleaning may, upon application to the commission and upon receipt of authority therefor, be made longer.

(4) Whenever the number of meters of any type which register in error beyond the limits specified in this regulation is found by the commission to be excessive, then this type shall be tested with such additional frequency as the commission may direct.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:071. Sewage.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to sewage utilities.

Section 1. General. The purpose of this regulation is to provide standard rules and regulations governing the service of sewage utilities operating under the jurisdiction of the Public Service Commission.

Section 2. Definitions. The following terms when used in these rules, shall have the meaning indicated:

(1) "Commission" means the Public Service Commission.

(2) "Collecting sewers" means sewers, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lampholes and necessary appurtenances and including service wyes, which are used to transport sewage and are owned, operated, or maintained by a sewage disposal utility.

(3) "Customer" means any person, partnership, association, corporation or governmental agency being provided with sewage disposal service by a utility.

(4) "Customer's service pipe" means any sewer pipe extending from the customer's residence or other structure receiving and transporting sewage to the utility's collecting sewer, but excluding service wyes.

(5) "Lift station" means that portion of the sewage system which is used to lift the sewage to a higher elevation.

(6) "Premises" means a tract of land or real estate including buildings and other appurtenances thereon.

(7) "Sewage" means ground garbage, human and animal excretions, and all other domestic type waste normally disposed of by a residential, commercial, or industrial establishment, through the sanitary sewer system.

(8) "Sewage treatment facilities" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, and controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for the public, or other beneficial or necessary purpose.

(9) "Sewage utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with the treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district. (KRS 278.010(5)(c).)

Section 3. Filings with this Commission. In addition to all filing requirements provided by 807 KAR 5:001E, Rules of procedure, the following requirements must also be met for all formal applications (outlined below) by sewage utilities before this commission:

(1) Application for certificates of public convenience and necessity. In addition to the filing requirements pro-

vided by 807 KAR 5:001, Sections 7 and 8, the applicant shall submit with its application, the following:

(a) A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facilities or other evidence of financial integrity such as will insure the continuity of sewage service.

(b) A copy of a preliminary approval issued by the Division of Water Quality of the Kentucky Department for Natural Resources and Environmental Protection approving the plans and specifications of the proposed construction.

(c) A detailed map of the sewage treatment facilities showing location of plant, effluent discharge, collection mains, manholes, and utility service area.

(d) A detailed estimated cost of construction which should include all capitalized costs (construction, engineering, legal, administrative, etc.).

(e) A financial exhibit as described in Section 6 of 807 KAR 5:001.

(f) The manner in detail in which it is proposed to finance the new construction, specifically stating amount to be invested, recouped through lot sales, or contributions (to be) received, etc.

(g) An estimated cost of operation after the proposed facilities are completed.

(h) An estimate of the total number of customers to be served by the proposed sewage treatment facilities, initially and ultimately the class of customers served (i.e., residential, commercial, apartments, recreational, institutional, etc.) and the average monthly water consumption for each class of customer.

(i) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(j) A detailed depreciation schedule of all treatment plant, property and facilities, both existing and proposed, listing all major components of "package;" treatment plants separately.

(k) The proposed rates to be charged for each class of customers and an estimate of the annual revenues derived from the customers using the proposed rate schedules.

(l) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

(m) If the establishment of rates is not sought by the applicant, omit paragraphs (i), (j), and (k) above.

(2) Application for authority to adjust rates. In addition to the filing requirements provided by 807 KAR 5:001, Sections 6, 7, and 9, the applicant shall submit with its application, the following:

(a) A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facilities or other evidence of financial integrity such as will insure the continuity of sewage service.

(b) A comparative income statement (PSC Form) showing test period; per books, revenues and expenses, pro forms adjustments to those figures, and explanations for each adjusted entry.

(c) A detailed analysis of any expenses contained in the comparative income statement which represent an allocation or proration of the total expense.

(d) A detailed depreciation schedule of all treatment plant properties and facilities, listing all major components of "package;" treatment plants separately.

(e) Copies of all service contracts entered into by the utility for outside services, such as but not limited to: operation and maintenance, sludge hauling, billing, collection, repairs, etc., in order to justify current contract services and charges or proposed changes in said contracts.

(f) A description of the applicant's property and facilities, including a statement of the net original cost (estimate if not known), the cost thereof to the applicant, and a current breakdown of contributed and non-contributed property and facilities owned by the applicant ("contributed property" means property paid for by others).

(g) A detailed customer listing showing number of customers in each customer class and average water consumption for each class of customers.

(h) If the utility has billing and collection services provided by the Louisville Water Company, remittance advices from the Louisville Water Company showing revenues and collection charges should be submitted for the test period.

(i) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(j) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business, to afford the commission a full and complete understanding of the situation.

(3) Application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness. In addition to the filing requirements, provided by 807 KAR 5:001 Sections 6, 7, and 10, the applicant shall submit with its application the following:

(a) Copy of amortization schedules of present and proposed indebtedness.

(b) A full and complete explanation of any corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

Section 4. Information Available to Customers. (1) System maps or records. Each utility shall maintain up-to-date maps, plans, or records of its entire force main and collection systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving any locality.

(2) Rates, rules, and regulations. A schedule of approved rates for sewage service applicable for each class of customers and the approved rules and regulations of the sewage utility shall be available to any customer or prospective customer upon request.

Section 5. Quality of Service. (1) General. Each utility shall maintain and operate sewage treatment facilities of adequate size and properly equipped to collect, transport, and treat sewage, and discharge the effluent at the degree of purity required by the health laws of the State of Kentucky, and all other regulatory agencies, federal, state, and local, having jurisdiction over such matters.

(2) Limitations of service. No sewage disposal company shall be obliged to receive for treatment or disposal any material except sewage as defined by Section 2(7). In compliance with the regulation, the utility shall make all reasonable efforts to eliminate or prevent the entry of surface or ground water, or any corrosive or toxic industrial

liquid waste into its sanitary sewer system. A utility may request assistance from the appropriate state, county, or municipal authorities in its efforts, but such a request does not relieve the utility of its aforementioned responsibilities.

Section 6. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest posible delay consistent with the safety of its customers and the general public.

(2) Scheduled interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers.

(3) Record of interruptions. Each utility shall keep a complete record of all interruptions on its system. This record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence.

Section 7. Design, Construction, and Operation. (1) General. The sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) Design and construction requirements. The design and construction of the sewage utility's collecting sewers, treatment plant and facilities, and all additions thereto and modifications thereof, shall conform to the requirements of the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Water Quality.

(3) Adequacy of facilities. The capacity of the sewage utility's sewage treatment facilities for the collection, treatment and disposal of sewage and sewage effluent must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

(4) Inspection of facilities. Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission. Unless otherwise authorized in writing by the commission, the sewage utility shall make inspections of collecting sewers and manholes on a scheduled basis at intervals not to exceed one (1) year, unless conditions warrant more frequent inspections and shall make inspections of all mechanical equipment on a daily basis. The sewage utility shall maintain a record of findings and corrective actions required, and/or taken, by location and date.

Section 8. Service Pipe Connections. (1) Sewage utility's service pipe. The sewage utility shall install and maintain that portion of the service pipe from the main to the boundary line of the easement, public road, or street, under which such main may be located.

(2) Customer's service pipe:

(a) The customer shall install and maintain that portion of the service pipe from the end of the sewage utility's portion into the premises served.

(b) Requirements for customer's service pipe. That portion of the service pipe installed and maintained by the customer shall conform to all reasonable rules of the utility. It shall be constructed of materials approved by the sewage utility and installed under the inspection of the sewage utility.

(3) Restriction on installation. A sewer service pipe shall not be laid in the same trench with a water pipe.

(4) Inspection. If a governmental agency requires an inspection of the customer's plumbing, the sewage utility shall not connect the customer's service pipe until it has received notice from the inspection agency certifying that the customer's plumbing is satisfactory.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.040, 278.160, 278.180, 278.185, 278.190, 278.310
NECESSITY AND FUNCTION: This regulation provides a simplified and less expensive procedure for small utilities in applying to the Commission for rate increases. A utility with 400 or fewer customer billings or $200,000 or less of gross annual revenues has the option of applying for rate adjustments by means of the formal procedure outlined in the preceding regulations or by following the procedure prescribed below which is intended to minimize the necessity for formal hearings in most cases, to reduce filing requirements, and in many cases to shorten the time period between application and Commission order. This procedure assumes that the applicant has maintained adequate financial records fully separated from any commonly-owned enterprise and requires that the applicant has on file with the Commission fully completed annual reports for the immediate past year and for at least the two (2) prior years when the applicant has been in existence that long.

Section 1. The Record upon Which Decision Will be Made. Unless a motion for a hearing is granted by the Commission, as hereinafter explained, the Commission will make its decision on the basis of the information contained in the annual report of the applicant for the immediate past year and annual reports for the two (2) prior years, when the applicant has been in existence that long; on information submitted in the application form; and upon information supplied by the applicant in response to informational requests submitted by the intervenors and the Commission.

Section 2. Filing Application. The applicant shall obtain from the Secretary of the Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601, the appropriate application form. Applicant shall complete the

information called for by the form, shall attach any documents requested by the form, and shall submit ten (10) copies to the Secretary of the Public Service Commission and one (1) copy to the Division of Consumer Protection, Office of the Attorney General, 209 St. Clair Street, Frankfort, Kentucky 40601, together with one (1) copy of each of the three (3) annual reports. Assistance in the preparation of the application form and any supporting documents may be obtained by telephoning the Commission, (502) 564-3940, or by arranging through its Secretary (same telephone number) an informal conference with an appropriate member of the Commission staff.

Section 3. Notice to Customers of Proposed Rate Changes. If the applicant has twenty (20) or fewer customers, written notice of the proposed rate changes and the estimated amount of increase per customer class shall be placed in the mail to each customer no later than the date on which the application is filed with the Commission and, in addition, a sheet shall be posted at its place of business containing such information. Except for sewer utilities which must give notice by mail to all of its customers pursuant to KRS 278.185, and which need not give any additional notice, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at its place of business and, in addition, notice thereof:

(1) Shall be included with customer billings made on or before the application is filed with the Commission;

(2) Shall be published by such date in a trade publication or newsletter going to all customers; or

(3) Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made prior to the filing of the application with the Commission.

Each such notice shall contain the following language: The rates contained in this notice are the rates proposed by (Name of Utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates included in this notice.

Section 4. Notice as to Intervention. The notice made in compliance with Section 3 of this regulation shall also include a statement to the effect:

(1) That any corporation, association, body politic or person may request leave to intervene by motion within thirty (30) days after notice of the proposed rate changes is given;

(2) That the motion shall be submitted to the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602, and shall set forth the grounds for the request including the status and interest of the party; and

(3) That copies of the application may be obtained by contacting the applicant at a name and address to be stated in the notice. Upon request from an intervenor whose request for intervention has been granted, the applicant shall furnish to such applicant a copy of the application with supporting documents and a copy of each of the three (3) annual reports.

Section 5. Intervention by Attorney General. Without making application therefor the Attorney General's Division of Consumer Protection will be deemed to be an intervening party in each case.

Section 6. Requests to Applicant for Additional Information. Any intervening party or the Commission shall submit requests for additional information to the applicant within forty (40) days after the application was received by the Commission. Applicant shall respond to the request within twenty-one (21) days after receipt of the request.

Section 7. Motion for Formal Hearing. Within ninety (90) days after receipt by the Commission of the application, a motion for a formal hearing setting forth grounds therefor may be made to the Commission by an intervenor. If the motion is granted, or if the Commission so orders without motion, the matter will proceed as a formal hearing. After the applicant is advised of the date and place of hearing, it shall give such notice as is required by KRS 424.300 with any newspaper notice being published in a newspaper of general circulation in its service area one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of the hearing.

Section 8. Decision by Commission. If a motion for a formal hearing has not been made or, if made, has been denied, the Commission will decide the issues on the basis of the written submission. If the Commission has not issued its order within five (5) months from the date the application was received by it, the applicant may place the proposed rates in effect subject to refund upon giving notice in writing to the Commission of its intention to do so at least twenty (20) days before doing so. If the Commission does not issue its order within such time periods, the Commission shall make a decision no later than ten (10) months after the application was received by the Commission. If it fails to do so, the rates placed in effect by the applicant shall continue in effect until changed by a new application to, or proceeding before, the Commission.

Section 9. Extensions of Time. Upon a showing of compelling need in a written application therefor, the Secretary of the Commission may grant an extension of time to the applicant or any intervenor.

MARLIN M. VOLZ, Chairman
ADOPTED: January 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 14, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

Amended After Hearing

(Republished prior to Subcommittee consideration as required by KRS 13.085(4).)

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Amended After Hearing

807 KAR 5:054. Small power production and cogeneration.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.040(3)
NECESSITY AND FUNCTION: Under Title II of the Public Utility Regulatory Policies Act of 1978, the Federal Energy Regulatory Commission (FERC) was required to adopt rules to encourage cogeneration and small power production by requiring electric utilities to sell electricity to qualifying cogeneration and small power production facilities and purchase electricity from such facilities. Section 210(f) of this act requires the state regulatory authority with jurisdiction over electric utilities to implement the FERC rules. As the state regulatory authority for Kentucky, the Public Service Commission proposes to implement those rules.

Section 1. General. It is the purpose of this regulation to set forth the manner in which the Public Service Commission will discharge the duties conferred upon it by Title II of the Public Utility Regulatory Policies Act of 1978.

Section 2. Definitions. (1) "Commission" means the Kentucky Public Service Commission.

(2) "Qualifying facility" means a cogeneration facility as defined herein, construction of which was commenced on or after November 9, 1978, or a small power production facility as defined herein, construction or substantial renovation of which was begun on or after November 9, 1978, neither of which is owned in equity interest greater than fifty (50) percent by a person primarily engaged in generation of electric power other than as described in these rules.

(3) "Cogeneration facility" means equipment used to produce electricity and another form of useful energy which is used for industrial purposes or commercial heating or cooling purposes through the sequential use of input energy and which facility meets criteria at Title 18 CFR Part 292.203(b) and 292.205, as published in the Federal Register on March 20, 1980 (45 F.R. 17959) and herein incorporated by reference.

(4) "Small power production facility" means an arrangement of equipment for the production of electricity with capacity no greater than eighty (80) megawatts, which equipment is located within a one (1) mile radius *or, in the case of hydroelectric facilities,* on the same impoundment of water, and which equipment must be powered at least *seventy-five (75)* [fifty (50)] percent by biomass, waste, renewable resources, or any combination thereof and not more than twenty-five (25) percent *by* coal or oil or natural gas or any combination thereof and which meets criteria at Title 18 CFR Part 292.204 as published in the Federal Register on March 20, 1980 (45 F.R. 17959) herein incorporated by reference.

(5) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(6) "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.

(7) "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or facilities, such utility would generate itself or purchase from another source.

(8) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the utility would have incurred if it had not engaged in interconnected operations but instead had generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

(9) "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(10) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

(11) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(12) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(13) "System emergency" means a condition on a utility's system which is liable to result in imminent significant disruption of service to customers or is imminently liable to endanger life or property.

Section 3. Applicability. This regulation shall apply to any electric utility subject to the jurisdiction of the Commission which purchases from or sells to any qualifying facility.

Section 4. Criteria for Qualifying Facility. (1) Criteria for qualification of small power production facilities and cogeneration facilities constructed on or after November 9, 1978, are the same as those adopted by the Federal Energy Regulatory Commission including Title 18 CFR Parts 292.203, 292.204, 292.205, and 292.206 as published in the Federal Register March 20, 1980 (45 F.R. 17959) and herein incorporated by reference.

(2) The qualifying status of small power production facilities and cogeneration facilities the construction of which was commenced prior to November 9, 1978, but

which were not selling power to the interconnected utility under an existing contract as of November 9, 1978, will be determined under this regulation on a case-by-case basis.

(3) Small power production facilities and cogeneration facilities constructed prior to November 9, 1978, but which were selling power to their interconnected utility under an existing contract on that date will not be considered qualifying facilities. At the expiration of the power sales contract between a small power production or cogeneration facility and the electric utility, the Commission will determine the qualifying status of the facility under this regulation on a case-by-case basis.

Section 5. (1)(a) All electric utilities with annual retail sales greater than 500 million kilowatt hours shall provide data to the Commission from which avoided costs may be derived not later than *June 30, 1982* [May 31, 1982], and not less often than every two (2) years thereafter unless otherwise determined by the Commission.

(b) In the case of a utility required to purchase all of its electricity from a wholesale supplier by contract, the utility shall file the contracts under which its capacity and energy are purchased, in addition to data required by subsection (2) of this section. The data required under subsection (2) of this section shall be provided by the supplying utility.

(2) Each electric utility as described in subsection (1) of this section shall file with the Commission and shall maintain for public inspection the following data:

(a) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more, and in blocks equivalent to not more than ten (10) percent of the system peak demands for systems with peak demand of less than 1,000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis during daily, seasonal peak and off-peak periods, by year, for the current calendar year, and each of the next five (5) years.

(b) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten (10) years.

(c) The estimated capacity costs at the completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy cost of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed separately for each individual unit and individual planned firm purchases.

(3) (a) Any data submitted by an electric utility beginning with the scheduled *June 30, 1982* [May 31, 1982], data shall be subject to review by the Commission.

(b) The electric utility has the burden of proof to justify the data it supplies.

Section 6. Electric Utility Obligations. (1) Each electric utility shall purchase any energy and capacity which is made available from a qualifying facility except as provided in subsections (2) and (3) of this section.

(2) The qualifying facility's right to sell power to the utility shall be curtailed in periods when purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases but instead generated an equivalent amount of energy.

(3) During any system emergency, an electric utility may discontinue:

(a) Purchases from a qualifying facility if such purchases would contribute to such emergency; and/or

(b) Sales to a qualifying facility provided that such discontinuance is on a non-discriminatory basis.

(4) Any utility which invokes subsection (2) of this section shall provide adequate notice to the qualifying facility. In addition, the Commission may require the utility to furnish documentation within ten (10) working days after the suspension occurs. If the utility fails to provide adequate notice or incorrectly identifies such a period, it will be required to reimburse the qualifying facility for energy and/or capacity available *for delivery on a legally enforceable basis* [to be supplied] as if such a period had not occurred.

(5) Rates for sale. An electric utility shall sell power to a qualifying facility upon request except as provided in subsection (3)(b) of this section. The rates for sale must be just and reasonable, in the public interest and nondiscriminatory. Rates for sale which are based on accurate data and consistent system costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or other similar cost-related characteristics. If a utility provides backup or supplementary power to a qualifying facility, then the costs associated with that capacity reservation are properly recoverable from the qualifying facility.

(6) Obligation to interconnect. (a) An electric utility is required to make any interconnection with a qualifying facility that is necessary for purchase and sale. Owners of qualifying facilities shall be required to pay for any additional *interconnection costs* [transmission or distribution costs, including costs of metering, system protection, and safety equipment] to the extent that such costs are in excess of those that the electric utility would have incurred if the qualifying facility's output had not been purchased. Payment shall be over a reasonable period of time and the terms of payment shall be a part of the contract between the electric utility and the qualifying facility.

(b) Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with applicable standards established in accordance with Section 7(6) of this regulation.

Section 7. Purchase of Output from Qualifying Facilities. (1) Qualifying facilities shall be permitted the option of either:

(a) Using the output of the qualifying facility to supply their power requirements and selling their surplus; or

(b) Simultaneously selling their entire output to the interconnecting utility while purchasing their own requirements from that utility.

(2) Rates for purchase of output of qualifying facility with design capacity of 100 kilowatts or less. Each electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These rates shall be just and reasonable to the electric consumer of the utility, in the public interest and nondiscriminatory. These rates shall be based on avoided costs *after consideration of the factors listed in subsection (5)(a) of this section* and shall be subdivided into an energy component and a capacity component.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided *energy* costs estimated at the time of delivery.

(b) Rates for power offered on all legally enforceable obligations shall be based at the option of the qualifying facility on either the avoided costs at the time of delivery or the avoided costs at the time the legally enforceable obligation is incurred. The capacity component shall be based on the supply characteristics of the qualifying facilities, and the aggregate capacity value of all 100 kilowatts or less facilities *which supply power on a legally enforceable basis.*

(3) Electric utilities shall design and offer a standard contract to qualifying facilities with a design capacity of 100 kilowatts or less. This contract shall be subject to the approval of the Commission.

(4) Rates for purchase of output of qualifying facility with design capacity over 100 kilowatts. Each electric utility shall provide a standard rate schedule for qualifying facilities with a design capacity over 100 kilowatts. The rate schedule shall be based on avoided costs which shall be subdivided into an energy component and a capacity component. These rates shall be used only as the basis for negotiating a final purchase rate with qualifying facilities after proper consideration has been given to factors affecting purchase rates listed in subsection (5)(a) of this section. Negotiated rates shall be just and reasonable to the electric consumer of the utility, in the public interest and non-discriminatory. If the electric utility and qualifying facility cannot agree on the purchase rate, than the Commission shall determine the rate after a hearing.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided costs estimated at the time of delivery.

(b) Rates for energy or capacity or both offered on a legally enforceable basis shall be based at the option of the qualifying facility on either the avoided costs at the time of delivery or the avoided costs at the time the obligation is incurred.

(5) Factors affecting rates for purchase for all qualifying facilities. In determining the final purchase rate, the following factors shall be taken into account:

(a) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak. The utility should consider for each qualifying facility the ability to dispatch, reliability, terms of contract, duration of obligation, termination requirements, ability to coordinate scheduled outages, usefulness of energy and capacity during system emergencies, individual and aggregate value of energy and capacity, and the shorter construction lead times associated with cogeneration and small power production.

(b) The ability of the electric utility to avoid costs due to deferral, cancellation, or downsizing of capacity additions, and the reduction of fossil fuel use.

(c) The savings *or the costs* resulting from line losses that would *not* have existed in the absence of purchases from a qualifying facility.

(6) Utility safety and system protection requirements. The qualifying facility shall provide adequate equipment to insure the safety and reliability of interconnected operations. This equipment shall be designed to protect the interconnect operations between the qualifying facility and the electric utility grid. If the electric utility and qualifying facility cannot agree [on reasonable protection], then the qualifying facility may apply to the Commission for *a* [its] determination of adequate system protection.

(7) Additional services to be provided to qualifying facilities. Upon request of a qualifying facility each electric utility shall provide supplementary power, backup power, maintenance power, and interruptible power. The Commission may waive this requirement if the electric utility demonstrates that compliance with it would result in impairing its ability to render adequate service to its other customers or would place an undue burden on it.

(8) Wheeling. The electric utility may wheel power to *another utility* [a third party] if the qualifying facility approves. This provision shall not eliminate the responsibility of the interconnected electric utility to purchase power from the qualifying facility if the qualifying facility does not approve *the wheeling transaction.* The *electric utility* [third party] which agrees to purchase the power shall pay *to the qualifying facility* its avoided cost connected with the transmission of this power adjusted for line losses.

(9) This regulation is not intended to restrict voluntary agreements between qualifying facilities and electric utilities. All contracts between qualifying facilities and electric utilities shall be provided to the Commission for its review.

(10) Disputes. The Commission's inquiry and determination will be limited to those parts of a proposed contract which are in dispute.

MARLIN M. VOLZ, Chairman
ADOPTED: January 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: January 12, 1982 at 4:30 p.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the January 6, 1982 Meeting

(Subject to subcommittee approval at the February 3, 1982 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, January 6, 1982, at 10 a.m., in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senator James Bunning and Representatives James E. Bruce, Albert Robinson and Gregory Stumbo.

Guests: Commissioner Richard H. Lewis, Department of Alcoholic Beverage Control; Barbara Anderson, John Cubine, Greg Lawther, Viola Brown, Sharon Rodriguez, Ked Fitzpatrick, and Ron Holland, Department for Human Resources; Commissioner Willard Stanley, Department of Mines and Minerals; Mike Salyers, Department of Labor; Judy Walden and Eugene Perkins, Department of Housing, Buildings and Construction; Gary Bale, W. L. Hampton, and Conley Manning, Department of Education; J. D. Wolfe, State Veterinarian's Office; Hughes Walker, Department of Agriculture; A. R. Romine, Department of Transportation; Dot Darby, Governor's Office; Marla Eldridge, Ruth Barrow, Carole Bodnar, Evelyn Tarkington, Arnetta Dunn, Kay Robinson, Ruth Staten, Kathryn Sallee, Judy Rafson, Glenda Bourne, Rita Berkely, and Lucy Erwin, Kentucky Nurses Association; Jean Ackley and Larry Owens, Kentucky Association of Nurse Anesthetists; Cathy Kipp, Kentucky Association of Nursing Students; Charles Coleman, Frontier Nursing Service; John Leinenbach, Blue Grass Chapter, A.G.C., Jan Gould, Al Grasch, and John Hinkle, Kentucky Retail Federation; Eugene Mooney; Thomas Mefford, Merrell Dow Pharmaceuticals; and Anthony Novello, Sandoz Pharmaceuticals.

Staff: Susan Harding, Cindy De Reamer, O. Joseph Hood, Garnett Evins and Armando Arrastia.

Press: Sy Ramsey, Associated Press.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Bruce, seconded by Representative Robinson the minutes of the December 2, 1981 meeting were approved.

The subcommittee reviewed the following emergency regulations and took no action:

CABINET FOR DEVELOPMENT
Department of Agriculture
Livestock Sanitation

302 KAR 20:110E. Treatment of imported mares.

302 KAR 20:120E. Treatment of imported stallions.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Medical Assistance

904 KAR 1:004E. Resource and income standards of medically needy

904 KAR 2:011E. Technical eligibility requirements.

Bureau for Social Insurance
Public Assistance

904 KAR 2:006E. AFDC technical requirements.

904 KAR 2:016E. Standards for need and amount; AFDC.

The following regulation was rejected by the subcommittee for non-conformance with statutory authority and legislative intent by a roll call vote of 3 No and 2 Yes:

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Plumbing

815 KAR 20:030. License application; examination.

The following regulations were deferred at the request of the issuing agency:

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining and Reclamation
Oil Shale Operations

405 KAR 30:080. Bond forfeiture.

405 KAR 30:110. Public participation in inspection and enforcement.

405 KAR 30:140. Written approval required for transfer of permit; successor in interest.

405 KAR 30:150. Oil shale records open to public inspection; confidential nature of certain data.

405 KAR 30:180. Petitions for rulemaking.

405 KAR 30:200. Petition requirements to designate lands unsuitable.

405 KAR 30:220. Postmining land use.

405 KAR 30:230. Air resources protection.

405 KAR 30:240. Protection of fish, wildlife, and related environmental values.

405 KAR 30:250. Use of explosives.

405 KAR 30:260. Access roads, haul roads, overland conveyor systems, pipelines, and other transport facilities.

405 KAR 30:270. Casing and sealing of drilled holes.

405 KAR 30:300. Protection of the hydrologic system.

405 KAR 30:350. Permanent impoundments.

405 KAR 30:410. In situ operations.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Medical Assistance

904 KAR 1:090. Drug formulary; therapeutic equivalence evaluations.

The following regulation was deferred by the subcommittee until the February meeting:

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
Motor Vehicle Dealers

601 KAR 20:070. Suitable premises.

The following regulations were accepted by the subcommitte and ordered filed:

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
Traffic

603 KAR 5:096. Highway classifications.

DEPARTMENT OF EDUCATION
Bureau of Instruction
Kindergartens and Nursery Schools
704 KAR 5:050. Public school programs.
Bureau of Vocational Education
Adult Education
705 KAR 7:020. Testing program.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Occupational Safety and Health
803 KAR 2:020. Adoption of 29 CFR Part 1910.
803 KAR 2:030. Adoption of 29 CFR Part 1926.
Department of Alcoholic Beverage Control
Licensing
804 KAR 4:100. Records to be retained.
804 KAR 4:220. Riverboats. (As Amended.) (Representative Robinson voted No.)
Department of Mines and Minerals
Division of Mining
805 KAR 5:010. Fees for licenses to operate.
Department of Housing, Buildings and Construction
Kentucky Building Code
815 KAR 7:020. Building code.
815 KAR 7:030. Energy code.
Plumbing
815 KAR 20:060. Quality and weight of materials.
815 KAR 20:070. Plumbing fixtures. (Technical change and amended.)
815 KAR 20:130. House sewers and storm water piping; methods of installation.
815 KAR 20:160. Standards for subsurface sewage disposal systems. (As Amended.)
815 KAR 20:191. Minimum fixture requirements.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board
902 KAR 20:021. Facility specifications; skilled nursing. (Replaces emergency.)
902 KAR 20:046. Facilities specifications; nursing homes. (Replaces emergency.)
902 KAR 20:058. Operation and services; primary care center. (Replaces emergency.)
902 KAR 20:078. Operations and services; group homes. (Replaces emergency.)
902 KAR 20:091. Facilities specifications, operation and services; community mental health—mental retardation center. (Replaces emergency.)
902 KAR 20:145. Operations and services; rural health clinics. (Replaces emergency.)
Medical Assistance
904 KAR 1:004E. Resource and income standards of medically needy.
904 KAR 1:011E. Technical eligibility requirements.
Bureau for Social Insurance
Public Assistance
904 KAR 2:100. Home energy assistance program; eligibility, criteria. (As Amended.)
Food Stamp Program
904 KAR 3:070. Fair hearings. (As Amended.)
Unemployment Insurance
904 KAR 5:240. Eligibility standards for extended benefits. (As Amended.)

On motion of Representative Robinson, seconded by Representative Stumbo, the meeting was adjourned at 11:30 a.m., until Wednesday, February 3, 1982 at 8 a.m. in Room 103 of the Capitol Annex.

Administrative Register of kentucky

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NOTE: Emergency regulations expire upon being repealed, replaced or sine die adjournment of the next regular session of the General Assembly.

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