Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 8, NUMBER 12

TUESDAY, JUNE 1, 1982

IN THIS ISSUE

Public Hearings Scheduled 1233

Emergency Regulations:
Finance and Administration Cabinet 1233
Department for Natural Resources and Environmental Protection:
Air Pollution 1236
Surface Mining Reclamation and Enforcement 1250
Public Service Commission 1390
Department for Human Resources—Social Insurance 1395

Amended Regulations Now in Effect:
Department of Insurance 1410

Amended After Hearing:
Department for Natural Resources and Environmental Protection:
Oil Shale Operations 1411
Department of Insurance 1413

Proposed Amendments:
Department for Natural Resources and Environmental Protection:
Air Pollution 1420
Department of Labor:
Kentucky Occupational Safety and Health 1444
Public Protection and Regulation Cabinet:
Banking and Securities 1456
Department for Human Resources:
Health Services 1458
Social Insurance 1459

Proposed Regulations Received Through May 15:
Department of Revenue 1460
Department for Natural Resources and Environmental Protection:
Surface Mining Reclamation and Enforcement 1460
Education and Arts Cabinet:
Department of Education 1599
Department for Human Resources—Social Insurance 1600

Reprint:
Department for Human Resources—Health Services 1601
Minutes of Administrative Regulation Review Subcommittee 1602

CUMULATIVE SUPPLEMENT

Locator Index—Effective Dates . . . . . M 2
KRS Index . . . . . M 8
Subject Index . . . . . M 13

NOTE: The June meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—WEDNESDAY, June 2, 1982, at 10 a.m., in Room 103, 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.

The *Administrative Register of Kentucky* is the monthly advance sheets service for the 1982 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the *Administrative Register of Kentucky* by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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

---

Administrative Register of kentucky

(ISSN 0096-1493)

© 1981 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $24 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 300, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

SENATOR JOE PRATHER, Senate President Pro Tem — Chairmen — REPRESENTATIVE BOBBY H. RICHARDSON, Speaker of the House

Senate Members

DELBERT MURPHY, Assistant President Pro Tem
DOUG MOSELEY, Minority Caucus Chairman
JOE WRIGHT, Majority Floor Leader
HELEN GARRETT, Majority Whip
EUGENE P. STUART, Minority Floor Leader
CLYDE MIDDLETON, Minority Whip
DAVID K. KAREM, Majority Caucus Chairman

House Members

DAVID THOMASON, Speaker Pro Tem
WILLIAM (BILL) DONNERMEYER, Majority Caucus Chairman
JIM LEMASTER, Majority Floor Leader
HERMAN W. RATTLIFF, Minority Caucus Chairman
ARTHUR L. SCHMIDT, Minority Floor Leader
JIM DUNN, Majority Whip
WOODY ALLEN, Minority Whip

VIC HELLARD, JR., Director

SAMUEL L. HENSLEY, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

REPRESENTATIVE WILLIAM T. BRINKLEY, Chairman
SENATOR WILLIAM L. QUINLAN
SENATOR JAMES P. BUNNING
SENATOR HELEN GARRETT
REPRESENTATIVE ALBERT ROBINSON
REPRESENTATIVE JAMES E. BRUCE
REPRESENTATIVE GREGORY D. STUMBO

Staff

SUSAN C. HARDING, Regulations Compiler
CYNTHIA L. DE REAMER, Assistant Regulations Compiler
O. JOSEPH HOOD, Counsel for the Subcommittee

Public Hearings Scheduled

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing will be held on July 1, 1982, at 10:00 a.m. at the auditorium, Capital Plaza Tower, Frankfort, on the following regulations:

401 KAR 50:010. Definitions and abbreviations. [8 Ky.R. 1420]
401 KAR 59:005. General provisions. [8 Ky.R. 1422]
401 KAR 59:010. New process operations. [8 Ky.R. 1425]
401 KAR 61:005. General provisions. [8 Ky.R. 1427]
401 KAR 61:015. Existing indirect heat exchangers. [8 Ky.R. 1431]
401 KAR 61:020. Existing process operations. [8 Ky.R. 1437]
401 KAR 61:075. Steel plants and foundries using existing electric arc furnaces. [8 Ky.R. 1438]
401 KAR 61:140. Existing by-product coke manufacturing plants. [8 Ky.R. 1441]
401 KAR 63:010. Fugitive emissions. [8 Ky.R. 1443]

DEPARTMENT OF INSURANCE

A public hearing will be held on June 2, 1982 at 9:00 a.m. at the Department of Insurance, 151 Elkhorn Court, Frankfort, on the following regulation:

806 KAR 39:060. Stickers or emblems. [8 Ky.R. 1166]

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-282
April 15, 1982

EMERGENCY REGULATION
Finance and Administration Cabinet
Travel Expense and Reimbursement

WHEREAS, the Finance and Administration Cabinet is directed and authorized by statute to establish travel expense and reimbursement regulations and is responsible for coordinating and supervising the fiscal affairs and procedures of the Commonwealth of Kentucky; and

WHEREAS, in its continuing effort to clarify and simplify the methods of exercising its responsibilities and duties in a manner intended to ensure an equitable application and enforcement of the procedures adopted pursuant to statutory authorization, the Finance and Administration Cabinet has proposed a travel expense and reimbursement regulation designed to accomplish this end; and

WHEREAS, orderly implementation by all affected agencies requires advance awareness of a date certain on which the new regulation shall be effective and such a date is stated in the new regulation; and

WHEREAS, it is the recommendation of the Finance and Administration Cabinet that in this time of escalating prices it would be in the best interest of the Commonwealth of Kentucky to implement the proposed regulation promptly and that an emergency be declared in order that said regulation can be made immediately effective:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of grounds for emergency by the Finance and Administration Cabinet with respect to filing the new travel expense and reimbursement regulation, and direct that said regulation shall be effective upon filing with the Legislative Research Commission, as provided by Chapter 13 of the Kentucky Revised Statutes.

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

FINANCE AND ADMINISTRATION CABINET
Department for Administration

200 KAR 2:006E. Employees' reimbursement for travel.

RELATES TO: KRS Chapters 42, 44, 45
PURSUANT TO: KRS 13.082, 42.030, 44.060, 45.170, 45.180, 45.300
EFFECTIVE: April 16, 1982
NECESSITY AND FUNCTION: The [Department of] Finance *and Administration Cabinet* is directed by law to coordinate and supervise the fiscal affairs and procedures of the State and is authorized to adopt regulations for that purpose. The purpose of this regulation is to specify eligibility, requirements, rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. General. (1) Affected agencies. Except as otherwise provided by law, this regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government. It shall not apply to the Legislative and Judicial branches and their employees.

(2) Enforcement:

(a) Each agency head is responsible for insuring that all travel expense from that agency is as economical as is feasible.

(b) All persons who travel on official state business shall state on the expense voucher the purpose of each trip, shall maintain records to support their claims and shall provide themselves with sufficient personal funds to defray their travel expense.

(c) 1. The Secretary of the [Department of] Finance *and Administration Cabinet* is responsible for insuring that all travel reimbursement conforms to this regulation. He may disallow, reduce or strike from expense vouchers any claims contrary to this regulation. He may also require written justification from agency heads for amounts claimed by their agencies and employees.

2. The Secretary of the [Department of] Finance *and Administration Cabinet* may approve exceptions where he finds such exception in the best interest of the Commonwealth.

(3) Eligibility. Except as provided by state law or by this regulation, no reimbursement can be claimed for expenses of any person other than employees, bona fide wards, or other persons in the official service of the Commonwealth. Only necessary expenses of official travel will be reimbursed.

(4) Interpretation. All final interpretations of this regulation shall be made by the Secretary of the [Department of] Finance *and Administration Cabinet*, and such determinations shall be final and conclusive.

Section 2. Definitions; Work Station. (1) The official work station of employees assigned to an office is the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the Commonwealth, not on employee's convenience. The designation of work station shall not be for the purpose of allowing additional mileage reimbursement for the employee.

(3) If an employee is permanently re-assigned, or is stationed at a new place two (2) months, the new place immediately becomes that employee's official work station concerning travel expense.

Section 3. Authorizations. (1) No travel expense shall be reimbursed unless the travel was authorized in advance as follows:

(a) Travel in Kentucky and within the other forty-nine (49) states and the District of Columbia must be authorized by the agency head or a designated representative. If four (4) or more persons are to travel to the same out-of-state destination the request shall explain the necessity for the number and shall also be authorized by the Secretary of *the* Finance *and Administration Cabinet.*

(b) Travel to foreign counties must be authorized in advance by the agency head, Secretary of the [Department of] Finance *and Administration Cabinet* and Governor, or by their designated representatives.

(2) Requests for the approval of the Secretary of *the* Finance *and Administration Cabinet* must reach the [Department of] Finance *and Administration Cabinet* at least five (5) working days before the intended start of travel. (Form B120-7, Authorization for Travel.)

Section 4. Transportation. (1) Economy required:

(a) State officers, agents, and employees traveling on state business shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes must be assumed by the individual.

(b) Round-trip, excursion or other reduced-rate rail or plane fares shall be obtained if practical.

(2) State vehicles. State-owned vehicles with their credit cards should be used for state business travel when available and feasible. No mileage payment shall be claimed when state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles may be disallowed if a state vehicle was available and feasible. No reimbursement shall be paid for travel between residence and work station.

(4) Buses, subways. For city travel, employees are encouraged to use buses and subways. Taxi fare may be allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be coach/tourist class and on this country's airlines. Additional expense for first-class travel will not be reimbursed by the state.

(6) Special transportation:

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation will be allowed only with acceptable justification.

(b) Privately-owned aircraft may be used only when it is to the advantage of the state, measured both by travel costs and travel time.

Section 5. Accommodations. (1)*(a)* Economy required. Lodging costs should be the most economical that are consistent with the state's best interests. Facilities providing special government rates or commercial rates will be used where feasible. Agencies shall contact the *cabinet's* [department's] Division of Accounts travel desk for assistance as needed in obtaining group rates and special state rates.

(b) State-owned facilities shall be used for meetings and/or lodging where available, practicable and economical.

(2) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home will not be reimbursed.

(3) (a) Group lodging, by contract. State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates must be requested. The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set by this regulation under "Reimbursement Rates." The agency shall certify that no employee is claiming individual reimbursement or subsistence for the same costs.

(b) For payment, the agency shall forward a receiving report (Authorization for Payment Form B111-9) with the vendor's bill, the names of affected employees and a copy of the contract to the [Department of Finance,] Division of Accounts. The payment shall not include telephone expenses or personal charges of employees. The state's payment shall be made directly to the hotel, motel, or other establishment.

(4) State parks. A state agency or institution using state park facilities for a group of four (4) or more may pay for rooms and meals by inter-account bill, within the limits of this regulation.

Section 6. Reimbursement Rates. (1) Lodging plus subsistence and other expenses. Except for the Judicial and Legislative branches, their employees, the Governor, and others listed in subsection (2) below, and except where otherwise provided by law, the reimbursement for official travel expense shall be:

(a) Lodging:

1. If lodging cost is the lowest feasible, a claimant who attaches the hotel's or motel's pre-printed, receipted bill shall be reimbursed within limits for that claimant's actual cost of lodging, *as follows:* [.]

2. Maximum anywhere in the United States shall be thirty-five dollars ($35) per day, plus taxes, except *at Kentucky state parks and in* [for] "high-rate" areas listed by the Secretary of the [Department of] Finance *and Administration Cabinet.* Maximum in listed "high-rate" areas shall be fifty-five dollars ($55) per day, plus taxes. *Maximum at any Kentucky state park shall be the park's standard rate.* The state will not pay for lodging within forty (40) miles of claimant's residence or work station.

(b) Subsistence:

1. Subsistence shall include amounts deemed to have been spent for meals, tax, and tips.

2. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work must require overnight absence at a destination more than forty (40) miles from both work station and home and must also *require* [include] absence from work station and home during mealtime. *(*The claimant shall attach to his travel voucher either his lodging receipts or other credible documentation sufficient for audit.*)* [Subsistence for dinner in Kentucky and for breakfast, lunch and dinner outside of Kentucky need not require overnight absence.]

3. The two (2) requirements in subparagraph 2 above do not apply for dinner in Kentucky and for breakfast, lunch and dinner outside of Kentucky.

4. [3.] For travel in Kentucky and United States, except "high-rate" areas listed by the Secretary of the [Department of] Finance *and Administration Cabinet,* subsistence shall not exceed:

Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.).....$ 3

Lunch (authorized travel must include 11 a.m. through 2 p.m.).....$ 3

Dinner (authorized travel must include 5 p.m. through 9 p.m.).....$ 8

5. [4.] For travel to high-rate areas listed by the Secretary of the [Department of] Finance *and Administration Cabinet,* subsistence shall not exceed:

Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.).....$ 4

Lunch (authorized travel must include 11 a.m. through 2 p.m.).....$ 5

Dinner (authorized travel must include 5 p.m. through 9 p.m.).....$11

6. [5.] A state officer or an employee assigned to attend a function of an organization not under the state officer's control may be reimbursed for actual meal cost charged by the organization, instead of subsistence.

(c) Privately-owned vehicles. Reimbursement for official use of a privately-owned vehicle shall be eighteen (18) cents per mile, and payment shall not exceed airplane coach fare.

(d) Commercial transportation. With receipts actual commercial cost will be reimbursed.

(e) Privately-owned aircraft. Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare.

(f) Camping vehicles. Claimants using camping vehicles for lodging shall be reimbursed not more than four dollars ($4) per night, plus parking or camping charges. A receipt for parking or camping charges must be submitted.

(g) Parking and tolls. Actual parking, bridge and toll charges are reimbursable. Toll receipts are not required for in-state travel by two (2) axle vehicles.

(h) Baggage charges. Reasonable expenses are allowed for baggage handling, for delivery to or from a common carrier or lodging and for storage. Charges for overweight baggage may be allowed if the excess was for official business.

(i) Registration fees. Registration fees required in official travel for admittance to meetings will be allowed. If the fee entitles registrants to meals, claims for subsistence shall be reduced accordingly.

(j) Telephone expenses. Telephone and telegraph costs for necessary official business will be allowed. Calls to agency central offices should be made collect or through the state's toll-free numbers.

(k) Other. Where justified, other necessary miscellaneous expenses of official travel may be allowed by the Secretary of the [Department of] Finance *and Administration Cabinet.*

(2) Actual and necessary expense:

(a) With pre-printed receipts for items over two dollars ($2), the actual and necessary cost of official business travel (including lodging, meals, related taxes, gratuities and commercial transportation) may be reimbursed to the following:

1. Governor and Lieutenant Governor, other state-wide elected Constitutional officials, cabinet secretaries, the Governor's staff, state employees traveling on assignment with the Governor or Lieutenant Governor, authorized persons traveling outside the United States and to non-paid members of statutory boards and commissions.

2. Reimbursement for official use of a privately-owned vehicle shall be eighteen (18) cents per mile, and such payment shall not exceed airplane coach fare.

(b) The Governor and cabinet secretaries may be reimbursed for their actual costs of entertaining official business guests and shall certify such costs to the [Department of] Finance *and Administration Cabinet.*

(c) With certification by the cabinet head, employees of the *Commerce* [Development] Cabinet [and the Department of Public Information] may be reimbursed for their actual costs of entertaining the state's official business guests concerning economic development and industrial and travel promotion.

(d) The Secretary of the [Department of] Finance *and Administration Cabinet* may question and reduce claims if amounts appear excessive.

Section 7. *Forms.* (1) Travel expense voucher (Form B120-6):

(a) Use:

1. This form shall be used to claim all reimbursement for travel expense.

2. The voucher shall include the expense of only one (1) person except where an employee pays the expenses for a ward of the Commonwealth or other person for whom the claimant is officially responsible. Such persons' names and

status or official relationship to the claimant's agency must be listed on the voucher.

3. A travel voucher shall ordinarily cover one (1) month or one (1) major trip. The purpose of each trip shall be shown on the voucher. If monthly expenses total less than ten dollars ($10), a voucher may cover as much as six (6) months within the same fiscal year.

4. Each travel expense voucher shall show the claimant's social security number.

(b) Preparation:

1. The travel voucher may be either typed or legibly prepared in ink. All receipts shall be stapled to the back at the upper left corner and shall be forwarded to the Department of Finance with the expense voucher.

2. If leave interrupts official travel, the travel voucher shall show the dates of leave.

(c) Computing mileage. Mileage for in-state travel will be based on Department of Transportation official mileage map or on [Department of] Finance *and Administration Cabinet* mileage chart if the department if the department issues such. Out-of-state mileage will be based on Rand McNally mileage maps. If point of origin is the claimant's residence, mileage will be paid between residence and travel destination or between work station and travel destination, whichever is shorter, except that commuting mileage between home and work station will not be paid.

(d) Vicinity travel. Vicinity travel and authorized travel within claimant's work station shall be listed on separate lines on the expense voucher.

(e) Signatures. Travel vouchers shall be signed and dated by the employee submitting the claim, the employee's supervisor and the agency head or authorized representative.

(f) Receipts. Except for mileage and subsistence, claimants shall furnish for each expenditure over two dollars ($2) the pre-printed, receipted bill from the hotel, motel, restaurant, or other establishment. The receipt must establish the amount, date, location and essential character of the expenditure.

(2) Authorization for out-of-state travel (Form B120-7). This form shall be used to request authorization for travel to foreign countries and for out-of-state travel by groups of four (4) or more persons.

(3) Contract for rooms and meals (Form B120-16). This form shall be used for group accommodations as described in this regulation under "Accommodations."

GEORGE E. FISCHER, Secretary
ADOPTED: April 15, 1982
RECEIVED BY LRC: April 16, 1982 at 12:00 noon.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-272
April 14, 1982

EMERGENCY REGULATIONS
Department for Natural Resources
and Environmental Protection

WHEREAS, Chapter 224 of the Kentucky Revised Statutes states that it is the responsiblity of the Department for Natural Resources and Environmental Protection to preserve existing clean air resources in the Commonwealth of Kentucky while ensuring economic growth; and

WHEREAS, the United States Environmental Protection Agency (EPA) has delegated full authority to the Commonwealth of Kentucky to implement and enforce EPA regulations for the Prevention of Significant Deterioration (PSD); and

WHEREAS, EPA has approved the Commonwealth of Kentucky's plan for New Source Review in Non-Attainment Areas (NSR) so that Kentucky can issue permits in non-attainment areas; and

WHEREAS, the Commonwealth's current PSD and NSR regulations expire upon sine die adjournment of the regular session of the General Assembly; and

WHEREAS, the Commonwealth of Kentucky must forfeit control over the PSD and NSR programs to EPA, if the current regulations expire and there are no regulations to replace them; and

WHEREAS, the Department has submitted proposed regulations to the Legislative Research Commission according to KRS 13.085(1) to become permanent regulations; and

WHEREAS, it is necessary for the Department to have the authority to enforce a PSD and NSR regulation until the Department has had time to promulgate the proposed regulations so that the PSD delegation will not be forfeited and the processing of permit applications for the state of Kentucky thereby delayed:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.085, do hereby acknowledge the finding of the Secretary of the Department for Natural Resources and Environmental Protection that an emergency exists and direct that the attached regulations shall become effective immediately upon being filed with the Legislative Research Commission.

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

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

401 KAR 51:017E. Prevention of significant deterioration of air quality.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
EFFECTIVE: April 16, 1982
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the prevention of significant deterioration of ambient air quality.

Section 1. Applicability. The provisions of this regulation are applicable to any major stationary source or any major modification which:

(1) Is constructed after the effective date of this regulation;

(2) Emits any pollutant regulated by the Clean Air Act; and

(3) Is constructed in areas designated as attainment or unclassifiable for any pollutant as defined in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Major stationary source" means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (a) of this subsection, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Clean Air Act; and

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by themselves.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any permit condition which was established after January 6, 1975; or

b. The source is approved to use under any permit issued under this regulation, previously adopted regulations 401 KAR 51:015 and 401 KAR 51:016E, or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless such change is prohibited after January 6, 1975 pursuant to 401 KAR 51:015, after the effective date of this regulation pursuant to this regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between January 6, 1975 and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this regulation, 401 KAR 51:015, 401 KAR 51:016E, or 40 CFR 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline data is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(f) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceed the old level.

(g) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable at and after the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(h) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group

(i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 to 63.

(11) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under Title 401, Chapters 57 and 59. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(c) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

1. Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

2. Actual emissions increases and decreases at any stationary source occurring after the baseline date.

(14) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of federal or state prevention of significant deterioration regulations. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 401 KAR 51:010 for the pollutant on the date of its complete application; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means any area (and every part thereof) designated as attainment or unclassifiable under 401 KAR 51:010 in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu g/m^3$ (annual average) of the pollutant for which the baseline date is established. Area redesignations under Section 107(d)(1)(D)or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a baseline date; or

(b) Is subject to this regulation and would be constructed in the Commonwealth of Kentucky.

(16) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards set forth in Title 401, Chapters 57 and 59;

(b) The applicable regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(17) "Enforceable" means all limitations and conditions, including those requirements developed pursuant to Title 401, Chapters 50 to 63.

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emis-

sions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a marine vessel.

(19) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21) (a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(23) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act that is not listed in Appendix A to this regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Appendix A to this regulation, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of a Class I area, and have an impact on such area equal to or greater than one (1) $\mu g/m^3$ (twenty-four (24) hour average).

(24) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(25) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means any area other than high terrain.

Section 3. Ambient Air Increments. In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the levels specified in Appendix B of this regulation. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 4. Ambient Air Ceilings. No concentration of a pollutant specified in Section 1 shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 5. Area Classifications. (1) Mammoth Cave National Park shall be a Class I area.

(2) Any other area, unless otherwise specified in the legislation creating such an area, is designated Class II.

Section 6. Exclusions from Increment Consumption. (1) The department may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 50:035, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have been converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from such sources before the effective date of such an order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal statute over the emissions from such sources before the effective date of such plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator of the U.S. EPA.

(2) No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the plan to which subsection (1)(b) of this section refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

(3) No exclusion under this section shall occur after May 7, 1981, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been submitted to the U.S. EPA.

(4) The plan revision referred to in subsection (3) of this section shall specify the following provisions:

(a) The time over which the temporary emission increase of sulfur dioxide or particulate matter would occur. Such time shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) That the time period for excluding certain contributions in accordance with paragraph (a) of this subsection is not renewable;

(c) That no emissions increase will occur from a stationary source which would:

1. Impact a Class I area or an area where an applicable increment is known to be violated; or
2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations will be in effect at the end of the time period specified in accordance with paragraph (a) of this subsection which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

Section 7. Stack Heights. (1) The degree of emission limitation required for control of any air pollutant under this regulation shall not be affected in any manner by:

(a) So much of the stack height of any source as exceeds good engineering practice; or

(b) Any other dispersion technique.

(2) Subsection (1) of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 8. Review of Major Stationary Sources and Major Modifications; Source Applicability and Exemptions. (1) No major stationary source or major modifications to which the requirements of Sections 9 to 17 apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.

(2) The requirements of Sections 9 to 17 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulations under the Clean Air Act that it would emit, except as otherwise provided in Section 1.

(3) The requirements of Sections 9 to 17 shall apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under 401 KAR 51:010. Major volatile organic compound sources locating in an area unclassified for ozone may choose to accept the non-attainment area review requirement immediately pursuant to 401 KAR 51:052E and conduct post-approval monitoring for ozone.

(4) The requirements of Sections 9 to 17 shall not apply to a particulate major stationary source or major modification if:

(a) The owner or operator:

1. Obtained a federal, state or local preconstruction approval effective before August 7, 1980;
2. Commenced construction before August 7, 1980; and
3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source of modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59; or

(d) The source is a portable stationary source which has previously received a permit under this regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;
2. The emissions from the source would not exceed its allowable emissions;
3. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
4. Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(5) The requirements of Sections 9 to 17 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, relative to that pollutant, the source or modification is located in an area designated as non-attainment under 401 KAR 51:010.

(6) The requirements of Sections 10, 12 and 14 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Would impact no Class I area and no area where an applicable increment is known to be violated; and

(b) Would be temporary.

(7) The requirements of Sections 10, 12 and 14 as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulations under the Clean Air Act from the modification after the application of best available control technology would be less than fifty (50) tons per year.

(8) The department may exempt a stationary source or modification from the requirements of Section 12 with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the amounts given in Appendix C to this regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Appendix C to this regulation, or the pollutant is not listed in Appendix C to this regulation.

Section 9. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under Title 401, Chapters 50 to 63 and each applicable emissions standard and standard of performance under Title 401, Chapters 57 and 59.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Clean Air Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operations in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Section 10. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

Section 11. Air Quality Models. (1) All estimates of ambient concentrations required under this regulation shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015.

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment under Section 17. Written approval of the U.S. EPA must be obtained for any modification or substitution. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models," filed by reference in 401 KAR 50:015, should be used to determine the comparability of air quality models.

Section 12. Air Quality Analysis. (1) Preapplication analysis.

(a) Any application for a permit under this regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

1. For the source, each pollutant that it would have the potential to emit in a significant amount as defined in Section 2(23);

2. For the modification, each pollutant for which it would result in a significant net emissions increase.

(b) With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(c) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, except that, if the applicant demonstrates through historical data or dispersion models that the monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months) will be obtained during a time period when maximum air quality levels can be expected, the data that is required shall have been gathered over at least that shorter period.

(e) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 401 KAR 51:052E may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraphs (a) to (d) of this subsection.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58, filed by reference in 401 KAR 50:015, during the operation of monitoring stations for purposes of satisfying subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this regulation.

(1) With respect to a major source or major modification to which Sections 9, 11, 13 and 15 apply, such information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the department, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

Section 15. Sources Impacting Federal Class I Areas; Additional Requirements. (1) Notice to federal land managers. The department shall provide notice of any permit application for a proposed major stationary source or major modification the emissions from which would affect a Class I area to the federal land manager, and the federal official charged with direct responsibility for management, of any lands within any such area. The department shall provide such notice promptly after receiving the application. The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under Section 17, and shall make available to them any materials used in making that determination, promptly after the department makes it.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the department, whether a proposed source or modification will have an adverse impact on such values.

(3) Denial; impact on air quality related values. The federal land manager of any such lands may demonstrate to the department that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Appendix B to this regulation. If the department concurs with such demonstration then the department shall not issue the permit.

(4) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the department may, provided that the applicable requirements of this regulation are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the maximum allowable increases over baseline concentration for such pollutants specified in Appendix D to this regulation.

(5) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (4) of this section may demonstrate to the Governor of the Commonwealth of Kentucky that the source cannot be constructed by reason of any maximum allowable increase in sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department shall issue a permit to such source or modification pursuant to the requirements of subsection (7) of this section, provided that the applicable requirements of this regulation are otherwise met.

(6) Variance by the governor with the president's concurrence. In any case where the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America. If the variance is approved, the department shall issue a permit pursuant to the requirements of subsection (7) of this section, provided that the applicable requirements of this regulation are otherwise met.

(7) Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to subsections (5) or (6) of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the maximum allowable increases over the baseline concentration as specified in Appendix E of this regulation and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period.

Section 16. Public Participation. The department shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this regulation.

Section 17. Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences

construction after the effective date of this regulation without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 9 to 18 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 18. Environmental Impact Statements. Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the department conducted pursuant to this regulation shall be coordinated with the broad environmental reviews under that Act and under Section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

Section 19. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the department in writing to approve a system of innovative control technology.

(2) The department shall, with the consent of the governor(s) of other affected state(s), determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 9(2) by a date specified by the department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance.

(c) The source or modification would meet the requirements of Sections 9 and 10 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department;

(d) The source or modification would not before the date specified by the department:

1. Cause or contribute to a violation of an applicable national ambient air quality standard;

2. Impact any Class I area; or

3. Impact any area where an applicable increment is known to be violated; and

(e) All other applicable requirements including those for public participation have been met.

(3) The department shall withdraw any approval to employ a system of innovative control technology made under this regulation if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

APPENDIX A TO 401 KAR 51:017E
Significant Net Emissions Rate

POLLUTANT	EMISSIONS RATE
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl chloride	1 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

APPENDIX B TO 401 KAR 51:017E
Ambient Air Increments

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
Annual geometric mean	5
24-hour maximum	10
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Class II	
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

APPENDIX C TO 401 KAR 51:017E
Significant Air Quality Impact

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 $\mu g/m^3$	8-hour average
Nitrogen dioxide	14 $\mu g/m^3$	annual average
Total suspended particulate	10 $\mu g/m^3$	24-hour average
Sulfur dioxide	13$\mu g/m^3$	24-hour average
Ozone	No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this regulation would be required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1$\mu g/m^3$	3-month average
Mercury	0.25$\mu g/m^3$	24-hour average
Beryllium	0.001$\mu g/m^3$	24-hour average
Fluorides	0.25$\mu g/m^3$	24-hour average
Vinyl chloride	15$\mu g/m^3$	24-hour average
Hydrogen sulfide	0.2$\mu g/m^3$	1-hour average

APPENDIX D TO 401 KAR 51:017E
Ambient Air Increments for Class I Variances

	Maximum Allowable Increase (micrograms per cubic meter)
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

APPENDIX E TO 401 KAR 51:017E
Ambient Air Increments for Presidential or Gubernatorial SO_2 Variances

Maximum Allowable Increase (Micrograms per cubic meter)

Period of Exposure	Terrain areas Low	High
24-hour maximum	36	62
3-hour maximum	130	221

JACKIE SWIGART, Secretary
ADOPTED: April 15, 1982
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

401 KAR 51:052E. Review of new sources in or impacting upon non-attainment areas.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
EFFECTIVE: April 16, 1982
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement and control of air pollution. This regulation establishes requirements for the construction, modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained.

Section 1. Applicability. The requirements of this regulation shall apply to new major sources or major modifications commenced after the classification date defined below and that will locate in or impact upon any area designated as non-attainment in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Major stationary source" means:

(a) Any stationary source which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(c) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any permit condition which was established after December 21, 1976; or

b. The source is approved to use under any permit issued under this regulation, previously adopted regulations 401 KAR 51:015 and 401 KAR 51:016E, or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless such change is prohibited under a permit condition which was established after December 21, 1976 pursuant to duly adopted regulations; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between December 21, 1976 and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable at and after the time that actual construction on the particular change begins;

3. The department has not relied on it in issuing any permit; and

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 and 63.

(11) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit operating rate, or hours or operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59;

(b) The applicable regulatory emission limitations, including those with a future compliance date; or

(c) The emission rate specified as an enforceable permit condition, including those with a future compliance date.

(12) "Enforceable" means having the legal authority to compel a source to comply with limitations and conditions including those developed pursuant to Title 401, Chapters 50 to 63.

(13) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary

source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a marine vessel.

(14) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (a) to (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The department may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

(15) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(16) "Significant" means in reference to a net emissions increase or the potential of a source to emit any pollutant, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.

(17) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in any implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard under Title 401, Chapters 57 and 59.

(18) "VOC" means volatile organic compounds.

(19) "Classification date" means the effective date of this regulation.

(20) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the department and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

(21) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(22) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than fifty (50) percent of the heat input to be considered a resource recovery facility under this regulation.

Section 3. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance. The department shall examine each proposed major new source and proposed major modification to determine if such source or modification will meet all applicable emission requirements in Title 401, Chapters 50 to 63. If the department determines that the proposed source or modification cannot meet the applicable emission requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact. In addition, the department shall determine whether the major stationary source or major modification would be constructed in an area designated in 401 KAR 51:010 as nonattainment for a pollutant for which the stationary source or modification is major. If a designated non-attainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source would not cause a new violation.

(3) Fugitive emission sources. Section 5 shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;

(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59.

Section 4. Sources Locating in Designated Attainment or Unclassifiable Areas. (1) This section shall apply only to new major stationary sources or new major modifications which will locate in designated attainment or unclassifiable areas specified in 401 KAR 51:010 if the source or modification would cause impacts which exceed the significance levels specified in Appendix B of this regulation at any locality that does not meet the national ambient air quality standards.
(2) Sources to which this section applies must meet the requirements in Section 5(1), (2) and (4). However, such sources may be exempt from Section 5(3).
(3) For sources of sulfur dioxide, particulate matter, and carbon monoxide, the determination of whether a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model pursuant to 401 KAR 50:040.
(4) For sources of nitrogen oxides, the initial determination of whether a new major source or major modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.
(5) For ozone, sources of VOC, locating outside a designated ozone non-attainment area as defined in 401 KAR 51:010, will be presumed to have no significant impact on the designated non-attainment area. If ambient monitoring indicates that the area of source location is in fact non-attainment, then the source may be permitted under the applicable provisions of this regulation until the area is designated non-attainment in 401 KAR 51:010. Once the area of source location has been redesignated to non-attainment status in 401 KAR 51:010, the provisions of Section 5(3) and (4) as they relate to emissions of VOC shall not apply.
(6) The determination as to whether a new major source or major modification would cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.
(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas the operation of which would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation may be approved only if both the following conditions are met:
(a) The new source is required to meet an emission limitation, or a design, operational or equipment standard, or existing sources are controlled, such that the new source will not cause a violation of any national ambient air quality standard.
(b) The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Section 8.

Section 5. Conditions for Approval. The provisions of this section shall apply to new major stationary sources or major modifications which would be constructed in an area designated in 401 KAR 51:010 as non-attainment for which the stationary source or modification is major. Approval may be granted only if the following conditions are met:
(1) The new major source or major modification shall be required to meet an emission limitation which specifies the lowest achievable emission rate for such source.
(2) The applicant shall certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth of Kentucky are in compliance with all applicable emission limitations and standards specified in Title 401, Chapters 50 to 63, or are in compliance with an expeditious enforceable compliance schedule or a court decree establishing a compliance schedule.
(3) Emissions from existing sources in the affected area of the proposed new major source or modifications (whether or not under the same ownership) shall be reduced (offset) such that there will be reasonable progress toward attainment of the applicable national ambient air quality standard. Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.
(4) The emission reductions shall be such as to provide a positive net air quality benefit in the affected area. Atmospheric simulation modeling is not necessary for volatile organic compounds and oxides of nitrogen. Except as provided in Section 4(5), compliance with subsection (3) of this section and Section 7(7) will be adequate to meet this condition.
(5) For a major stationary source or major modification locating in an area designated non-attainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this regulation shall specify that construction shall not commence until the U.S. EPA has approved the department's plan relating to the requirements of Part D, Title I, of the Clean Air Act.

Section 6. Exemptions from Certain Conditions. The following sources are exempt from Secton 5(3) and (4):
(1) Resource recovery projects burning municipal solid waste;
(2) Sources which must switch fuels due to lack of adequate fuel supplies or a source which is required to be modified as a result of federal regulations or other federal statutes and from which no exemption from such regulation or statute is available to the source. Such exemption shall be granted only if all the requirements of subsection (3) of this section are met;
(3) The exemptions contained in this section for sources identified under subsections (1) and (2) shall be granted only if:
(a) The applicant demonstrates to the department's satisfaction that it has made its best efforts to obtain sufficient emission offsets to comply with Section 5(3) and (4) and that such efforts were unsuccessful;
(b) The applicant has secured all available emission offsets; and
(c) The applicant will continue to seek the necessary emissions offsets and apply them when they become available.
(4) Such an exemption may result in the need to revise the applicable requirements of the department to provide additional control of existing sources so as to achieve

reasonable progress towards attainment of applicable ambient air quality standards.

(5) Temporary emission sources, such as pilot plants, portable facilities which will be relocated after a short period of time not to exceed 120 days, and emissions resulting from the construction phase of a new source, shall be exempt from Section 5(3) and (4).

(6) Secondary emissions associated with major sources or major modifications locating in or impacting upon a non-attainment area may be exempt from Section 5(1) and (2), providing that the source of the secondary emissions is not itself a major stationary source or major modification. If the source of the secondary emissions is itself a major source or major modification, then that source is subject to the provisions of this regulation.

Section 7. Baseline for Determining Credit for Emission Offsets. The baseline for determining credit for emission reductions or offsets will be the emission limitations in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowed for existing control that goes beyond that required by regulations. Offset calculations shall be made on a pound per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons per year basis providing that baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. Where the department requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(1) No applicable emission limitation. Where the requirements of the department do not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be actual emissions determined under actual operating conditions for the previous two (2) year period. Where the emission limitations required by the department allow greater emissions than the uncontrolled emission rate of the source, emission offset credit will be allowed only for control below the uncontrolled emission rate.

(2) Combustion of fuels. The emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the emission limitation requirements of the department for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction (either actual or allowable) shall not be used for emission offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is not acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date.

(3) Operating hours and source shutdown. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified in writing of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(4) Credit for hydrocarbon substitution. No emission offset credit may be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane and trichlorofluoroethane.

(5) Banking of emission offset credit. New sources obtaining permits by applying offsets after January 16, 1979 may bank offsets that exceed the requirements of reasonable progress toward attainment for future use. An owner or operator of an existing source that reduces its own emissions may bank any resulting reduction beyond those required by regulation for use under this regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used under the preconstruction review program required in the Clean Air Act as long as these banked emissions are identified and accounted for in the Commonwealth's control strategy. The banked emissions may be used pursuant to procedures specified in 401 KAR 51:055.

(6) Offset credit for meeting NSPS or NESHAPS. Where a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 59 and 57 respectively, and a different emission limitation required by the department, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations may not be used as offset credit.

(7) Location of offsetting emissions. In the case of emission offsets involving nitrogen oxides, offsets may be obtained anywhere within the state. For sulfur dioxide, particulate matter and carbon monoxide, the department shall require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. In the case of emission offsets involving VOC, offsetting emissions may be obtained only within the county in which the source is to be located.

Section 8. Administrative Procedures. The necessary emission offsets may be proposed either by the owner of the proposed source or the department. The emission reduction committed to must be enforceable by the department, and must be accomplished by the start-up date of the new source. If emission reductions are to be obtained in a state that neighbors the Commonwealth of Kentucky for a new source to be located in the Commonwealth, the emission reductions committed to must be enforceable by the neighboring state and/or local agencies and the U.S. EPA.

(1) Source initiated emission offsets. The owner and/or operator of a source may propose emission offsets which involve reductions from sources controlled by the owner (internal emission offsets) and/or reductions from other sources (external emission offsets). As long as the emission offsets obtained represent reasonable progress toward attainment, they shall be acceptable. An internal emission offset shall be made enforceable by inclusion as a condi-

tion of the new source permit. An external emission offset will not be accepted unless the affected source(s) is subject to a new emission limitation requirement of the department to ensure that its emissions will be reduced by a specified amount in a specified time. The form of the new emission limitation may be a department regulation, operating permit condition, or consent or enforcement order.

(2) Department initiated emission offsets. The department may commit to reducing emissions from existing sources (including mobile sources) to provide a net air quality benefit in the impact area of the proposed new source so as to accommodate the proposed new source. The commitment must be reflected in the emission limitation requirements of the department for the new and existing sources as required by this section.

Section 9. Source Obligation. (1) Any owner or operator who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after the effective date of this regulation without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, or if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen (18) month period upon satisfactory showing that an extension is justified.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

APPENDIX A TO 401 KAR 51:052E
Significant Pollutant and Emissions Rate

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy

APPENDIX B TO 401 KAR 51:052E
Significant Levels of Air Quality Impact

Pollutant	Annual Average	Averaging Time 24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	—	25 $\mu g/m^3$	—
Total Suspended Particulates	1.0 $\mu g/m^3$	—	—	—	—
Nitrogen Dioxide	1.0 $\mu g/m^3$	—	—	—	—
Carbon Monoxide	—	—	0.5mg/m^3	—	2mg/m^3

JACKIE SWIGART, Secretary
ADOPTED: April 15, 1982
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-370
May 12, 1982

EMERGENCY REGULATIONS
Department for Natural Resources and Environmental Protection
Regulations Concerning Surface Coal Mining and Reclamation Operations and Coal Exploration Operations

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, 1980 and 1982 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 being given final state program approval under said Federal Surface Mining Control and Reclamation Act of 1977; and

WHEREAS, the U.S. Secretary of the Interior conditionally approved the Kentucky state program on April 13, 1982, to become effective upon publication of the approval in the *Federal Register*, now anticipated to occur on or about May 18, 1982; and

WHEREAS, Executive Order 81-1061 promulgated said regualtions as emergency regulations on December 23, 1981; and

WHEREAS, the Secretary of the Department for Natural Resources and Environmental Protection has advised that it is in the best interests of the Commonwealth to declare that an emergency continues to exist and that said regulations should be re-promulgated; and

WHEREAS, the Secretary of the Department for Natural Resources and Environmental Protection has fur-

ther 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 Chapter 13, hereby acknowledge the finding of the Secretary of the Department for Natural Resources and Environmental Protection that an emergency continues to exist 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: May 14, 1982

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. Hearings. The hearing provisions of this chapter shall apply to the resolution of all notices and orders that were issued by the department prior to the date of primacy as defined in 405 KAR 7:020E.

Section 7. 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 8. 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 9. This regulation shall become effective on the date of primacy as defined in 405 KAR 7:020E.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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 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. Hearings. The hearing provisions of this chapter shall apply to the resolution of all notices and orders that were issued by the department prior to the date of primacy as defined in 405 KAR 7:020E.

Section 7. 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 8. 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 9. This regulation shall become effective on the date of primacy as defined in 405 KAR 7:020E.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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 and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(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 oxida-

tion, 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) Acquisition 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.

(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 interest of the applicant.

(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 minesite. 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; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(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 twen-

ty (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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:030E. Applicability.

RELATES TO: KRS 350.010, 350.028, 350.057, 350.060, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: May 14, 1982
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. Applicability. Title 405, Chapter 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of SMCRA.

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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:040E. General obligations of operators and permittees.

RELATES TO: KRS 350.050, 350.057, 350.060, 350.410, 350.450
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.057, 350.060, 350.090, 350.151, 350.465
EFFECTIVE: May 14, 1982
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 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 standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Such certification shall not be construed to constitute a warranty or guarantee.

(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 certification which is not made in such form.

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

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:060E. Experimental practices mining.

RELATES TO: KRS 350.020, 350.028, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:080E. Small operator assistance.

RELATES TO: KRS 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:090E. Hearings.

RELATES TO: KRS 224.033, 224.081, 224.083, 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990
PURSUANT TO: KRS 13.082, 224.033, 350.020, 350.028, 350.255, 350.465, 350.610
EFFECTIVE: May 14, 1982
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, modifica-

tion, 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 unless such hearing is waived by the person to whom the notice or order was issued. 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 fifteen (15) days of the mailing of the proposed penalty assessment, 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 written request filed within fifteen (15) days of the mailing of the proposed penalty assessment by the operator 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:095E. Assessment of civil penalties.

RELATES TO: KRS 350.990(1)
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465, 350.990(1)
EFFECTIVE: May 14, 1982
NECESSITY AND FUNCTION: KRS 350.990(1) directs the department to promulgate a regulation setting forth the method for calculating monetary penalties. This regulation establishes how and when penalties will be assessed and includes a point system for calculating penalties, rules for assessing continuing violations, and a provision allowing waiver of the point system.

Section 1. How Penalty Assessments are Made. The department shall review each violation, condition or practice cited in a notice of noncompliance and order for remedial measures or order of cessation and immediate compliance in accordance with the assessment procedures described in 405 KAR 7:090E and this regulation to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

Section 2. When Penalty Will be Assessed. (1) The department shall assess a penalty for each violation, condition or practice cited in an order of cessation and immediate compliance.

(2) The department shall assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures, if the violation is assigned thirty-one (31) points or more under the point system described in Section 3.

(3) The department may assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures if the violation is assigned thirty (30) points or less under the point system described in Section 3. In determining whether to assess a penalty, the department shall consider the factors listed in 405 KAR 7:090E, Section 3(2).

Section 3. Point System for Penalties. The department shall use the point system described in this section to determine the amount of any penalty. Points shall be assigned as follows:

(1) History of previous violations. The department shall assign up to thirty (30) points based on the history of previous violations. One (1) point shall be assigned for each past violation cited in a notice of noncompliance and order for remedial measures. Five (5) points shall be assigned for each violation (but not a condition or practice) cited in an order of cessation and immediate compliance. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(a) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one (1) year.

(b) No violation for which the notice or order has been vacated shall be counted; and

(c) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The department shall assign up to thirty (30) points based on the seriousness of the violation, as follows:

(a) Probability of occurrence. The department shall assign up to fifteen (15) points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

1. No probability of occurrence; zero (0) points.
2. Insignificant probability of occurrence; one (1) to four (4) points.
3. Unlikely probability of occurrence; five (5) to nine (9) points.
4. Likely probability of occurrence; ten (10) to fourteen (14) points.
5. Occurred; fifteen (15) points.

(b) Extent of potential or actual damage. The department shall assign up to fifteen (15) points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

1. If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the department shall assign zero (0) to seven (7) points, depending on the duration and extent of the damage or impact.
2. If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the department shall assign eight (8) to fifteen (15) points, depending on the duration and extent of the damage or impact.

(c) Administrative requirements. In the case of a violation of an administrative requirement, such as a requirement to keep records, the department shall, in lieu of paragraphs (a) and (b) of this subsection, assign up to fifteen (15) points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence. The department shall assign up to twenty-five (25) points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(a) A violation, condition or practice which occurs through no negligence shall be assigned no penalty points for negligence. No negligence means an inadvertent violation, condition or practice which was unavoidable by the exercise of reasonable care.

(b) A violation, condition or practice which is caused by negligence shall be assigned twelve (12) points or less, depending on the degree of negligence. Negligence means the failure of a permittee to prevent the occurrence of the violation, condition or practice due to indifference, lack of

diligence, or lack of reasonable care, or the failure to abate any violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care.

(c) A violation, condition or practice which occurs through a greater degree of fault than negligence shall be assigned thirteen (13) to twenty-five (25) points, depending on the degree of fault. A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(4) Good faith in attempting to achieve compliance. The department shall subtract up to fifteen (15) points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation, condition or practice. Points shall be subtracted as follows:

(a) Rapid compliance. Six (6) to fifteen (15) points shall be subtracted from the total points if the person to whom the notice or order was issued took extraordinary measures to abate the violation, condition or practice in the shortest possible time and that abatement was achieved before the time set for abatement.

(b) Normal compliance. Zero (0) to five (5) points shall be subtracted from the total points if the person to whom the notice or order was issued abated the violation, condition or practice by the abatement date.

Section 4. Determination of Amount of Penalty. For each violation, condition, or practice cited in a notice or order, the department shall determine the amount of any civil penalty by converting the total number of points assigned under Section 3 to a dollar amount, according to the schedule in Appendix A of this regulation.

Section 5. Assessment of Separate Violations for Each Day. (1) The department may assess separately a civil penalty for each day from the date of issuance of the notice or order to the date of abatement of the violation. In determining whether to make such an assessment, the department shall consider the factors listed in 405 KAR 7:090E, Section 3(2) and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two (2) or more days and which is assigned more than seventy (70) points under Section 3, the department shall assess a civil penalty for a minimum of two (2) separate days.

(2) Whenever a violation, condition or practice contained in a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance has not been abated within the abatement period set in the notice or order, a civil penalty of not less than $750 shall be assessed for each day during which such failure continues according to the provisions of 405 KAR 7:090E, Section 10(2).

Section 6. Waiver of Use of Point System to Determine Civil Penalty. (1) The department upon its own initiative, or upon a written request by the person to whom the notice or order was issued that is received within fifteen (15) days of mailing of the proposed penalty assessment, may waive the use of the point system contained in Section 3 to set the civil penalty, if the department determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the department shall not waive the use of the point system or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate the violation, condition or practice. The basis for every waiver shall be fully explained and documented in the records of the case.

(2) If the department waives the use of the point system, it shall use the criteria set forth in 405 KAR 7:090E, Section 3(2) to determine the appropriate penalty. When the department has elected to waive the use of the point system, it shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

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

APPENDIX A OF 405 KAR 7:095E

Penalty Schedule

Points	Dollars	Points	Dollars
1	20	36	1,600
2	40	37	1,700
3	60	38	1,800
4	80	39	1,900
5	100	40	2,000
6	120	41	2,100
7	140	42	2,200
8	160	43	2,300
9	180	44	2,400
10	200	45	2,500
11	220	46	2,600
12	240	47	2,700
13	260	48	2,800
14	280	49	2,900
15	300	50	3,000
16	320	51	3,100
17	340	52	3,200
18	360	53	3,300
19	380	54	3,400
20	400	55	3,500
21	420	56	3,600
22	440	57	3,700
23	460	58	3,800
24	480	59	3,900
25	500	60	4,000
26	600	61	4,100
27	700	62	4,200
28	800	63	4,300
29	900	64	4,400
30	1,000	65	4,500
31	1,100	66	4,600
32	1,200	67	4,700
33	1,300	68	4,800
34	1,400	69	4,900
35	1,500	70 and above	5,000

JACKIE A. SWIGART, Secretary
ELMORE C. GRIM, Commissioner
ADOPTED: April 26, 1982
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:100E. Notice of citizen suits.

RELATES TO: KRS 350.250
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.250, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 7:110E. Petitions for rulemaking.

RELATES TO: KRS 350.255
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.255, 350.465
EFFECTIVE: May 14, 1982
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 hearing 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 8:010E. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465

PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465

EFFECTIVE: May 14, 1982

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 assign-

ment 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.

(2) For applications submitted prior to July 15, 1982, 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. For applications submitted on or after July 15, 1982, the above amounts shall be increased to $375 and seventy-five dollars ($75) respectively.

(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 publication 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 ten (10) 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. If the application is determined to be incomplete, the department 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.

(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 complied 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. Prior to July 15, 1982, applications for major and minor revisions shall include a basic fee of $250. Prior to July 15, 1982, 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. On and after July 15, 1982, the above amounts shall be increased to $375 and seventy-five dollars ($75) respectively.

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. Prior to July 15, 1982, a fee of $250. On and after July 15, 1982, a fee of $375.

(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.
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 Title 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, assign-

ment, or sale to the rights granted by a permit issued under this Title 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 for applications submitted prior to July 15, 1982, a fee of $375 for applications submitted on and after July 15, 1982; 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 would be eligible to receive a permit in accordance with the criteria specified in Section 14.

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.

(4) Proof of transfer, sale or assignment of rights. The successor in interest shall submit proof of the execution of the transfer, sale or assignment of rights within fifteen (15) days following execution of the agreement between the prior permittee and the successor in interest.

(5) Release of bond liability. The department may release the prior permittee from bond liability on the permit area provided that the successor in interest has filed a performance bond satisfactory to the department, has received written approval of the department for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under this Title for reclamation of the areas affected by all prior permittees.

(6) Interim program permits. The procedures of this section, including prior approval, public notice and comment, issuance of approval of transfer, sale or assignment of rights, submission of proof of execution of the agreement, and release of bond liability, shall apply to successors in interest to a valid interim program permit. However, the application content, performance bond requirements, and criteria for approval shall be modified by the department to be consistent with the requirements of the interim program.

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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 8:020E. Coal exploration.

RELATES TO: KRS 350.057, 350.610
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.057, 350.060, 350.465
EFFECTIVE: May 14, 1982
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) Prior to July 15, 1982, a fee of $250. On or after July 15, 1982, a fee of $375.

(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 ex-

ploration 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 8:030E. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.465
EFFECTIVE: May 14, 1982
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 per-

mit 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 proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the department.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the department.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the department to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, 38, 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. The qualified registered professional engineer shall not be required to certify true ownership of property.

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 embankment 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 8:040E. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.151, 350.465
EFFECTIVE: May 14, 1982
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 prin-

cipal 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 certificate of liability insurance according to 405 KAR 10:030E, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate Regional Office of the department where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010E, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the department and made a part of the complete application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010E, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include 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 contains soil map units which have not been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in 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. The qualified registered professional engineer shall not be required to certify the true ownership of property.

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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 8:050E. Permits for special categories of mining.

RELATES TO: KRS 350.093, 350.445, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.093, 350.151, 350.450, 350.465
EFFECTIVE: May 14, 1982
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) General. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations. 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. 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.

(2) Augering on previously mined lands.

(a) In addition to other requirements of Title 405, Chapter 8, each application for a permit to conduct auger mining on an area mined prior to May 3, 1978, and not reclaimed to the standards of Title 405 shall contain such information as the department deems necessary to describe the proposed affected area and method of operation and show that the proposed method of operation will result in stable postmining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities.

(b) If the department determines that the affected area cannot be stablized and reclaimed subsequent to augering or that the operation will result in adverse impact to the proposed permit area or adjacent area, the permit shall not be issued.

(c) The department shall, consistent with all applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, issue a permit if the applicant demonstrates that the proposed surface coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of the previously mined area.

(d) The department shall ensure that all applicable performance standards can be met.

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 non-mined 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 10:010E. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465
EFFECTIVE: May 14, 1982
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 "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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 10:020E. Amount and duration of performance bond.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.465
EFFECTIVE: May 14, 1982
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 ter-

minated 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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(2).

(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 per-

mit 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 10:040E. Procedures, criteria and schedule for release 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: May 14, 1982
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. This regulation also sets forth certain notice and hearing requirements pertinent to bond release.

Section 1. Procedures for Release 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) of this regulation 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(3).

(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 publication 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.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) Liability under performance bonds shall not be eligible for release until the permittee has met the requirements of the applicable reclamation phase as defined in subsection (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.

(2) The maximum portion of the liability under performance bonds applicable to a permit area which may be released shall be calculated on the following basis:

(a) Release 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 an additional amount not to exceed twenty-five (25) percent of the total original bond amount on the permit area 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) 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.

(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 ap-

plicable liability period under 405 KAR 10:020E, Section 3(2) has expired.

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

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 10:050E. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.130, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 12:010E. General provisions for inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.130, 350.465
EFFECTIVE: May 14, 1982
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 permitted under Title 405, Chapter 8 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 permitted under Title 405, Chapter 8.

(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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 12:020E. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.130, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 12:030E. Public participation in inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.465
EFFECTIVE: May 14, 1982
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. Citizens Requests to Accompany Inspector. (1) Any person requesting an inspection under Section 1 may request to accompany the authorized representative of the department during an inspection relative to the violation, condition, or practice with which the request was concerned.

(2) Such person shall have a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information, provided that the person is in the presence of and is under the control, direction, and supervision of the authorized representative of the department while on the property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(3) The authorized representatives of the department shall exercise reasonable discretion in establishing the time and manner for inspections under this section. Nothing in this section shall be construed to place a duty of care upon the department for persons accompanying authorized representatives of the department.

(4) Any person desiring to participate in an inspection as provided in this section shall provide his or her own transportation to the site, and shall wear a hard hat and toe caps, to be supplied 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:010E. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.405, 350.410, 350.440, 350.445, 350.450, 350.465

PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465

EFFECTIVE: May 14, 1982

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 permanently reclaimed in accordance with the requirements of KRS Chapter 350, the regulations of this Title, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the department approves the retention of such equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 7. Temporary Cessation of Operations. (1) Notice required. Not less than three (3) days prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the department that such temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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. Deferments. (1) The deparment may allow a permittee to defer coal removal and contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that said deferment is necessary to address at least one (1) of the following:

(a) Adverse condition including weather, labor, and other conditions clearly beyond the permittee's control.

(b) Combined surface and underground mining activities subject to the provisions of 405 KAR 8:050E, Section 7 and 405 KAR 20:020E, and other mining operations pursuant to KRS 350.080.

(c) Coal marketing problems.

(2) Application for a deferment pursuant to this section shall be in the form prescribed by the department. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that no environmental damage will occur during the period of deferment.

(3) Reclamation deferments may be approved for a period reasonably related to the specified conditions justifying the deferment. The deferral shall not extend beyond the expiration date of the permit and in no event shall the aggregate deferral period exceed thirty (30) months, except where approved combined mining is being carried out under subsection (1)(b) of this section.

(4) The department shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the department in the event of forfeiture.

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

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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, sing-

ly 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) Stablizing 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 disturbance 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:070E. Water quality standards and effluent limitations.

RELATES TO: KRS 350.020, 350.090, 350.100, 350.405, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: May 14, 1982
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 in-

cluding 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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 ex-

cess 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:090E. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:100E. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.420, 350.455, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: May 14, 1982
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:120E. Use of explosives.

RELATES TO: KRS 350.430
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: May 14, 1982
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 depart-

ment 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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) The responsible registered professional engineer shall certify to the department within two (2) weeks after each inspection that the coal processing waste bank has been constructed as specified in the design approved by the department. Copies of the inspection findings shall be maintained at the mine site.

(2) If any inspection discloses that a potential hazard exists, the department shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department shall be notified immediately. The department shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

Section 3. Water Control Measures. (1) Except where the department approves alternative practices which ensure structural integrity of the waste bank and protection of ground and surface water quality, a properly designed subdrainage system shall be provided, which shall:

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(2) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with 405 KAR 16:130E, Section 2(4).

(3) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(4) All water discharged from a coal processing waste bank shall comply with 405 KAR 16:060E, Sections 1, 2 and 9; 405 KAR 16:070E; 405 KAR 16:090E; 405 KAR 16:110E.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 16:130E, Sections 1 and 2, except to the ex-

tent 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 processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the department and MSHA under 405 KAR 8:040E, Section 27.

Section 8. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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, except as provided in paragraph (c) of this subsection, 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.

(c) Where the permittee is conducting augering operations on previously mined lands under a permit issued under 405 KAR 8:050E, Section 2(2), the permittee shall use all reasonably available spoil material to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the permittee shall backfill the highwall to a minimum of four (4) feet above the coal seam being mined, seal all holes in accordance with 405 KAR 20:030E, and stablize any adversely, physically impacted highwall.

(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 non-combustible 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:200E. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.420, 350.435, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.465
EFFECTIVE: May 14, 1982
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 successful vegetation, and continues for not less than five (5) years.

(c) The ground cover and productivity of the revegetated area shall be considered equal if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands, or ground cover and productivity are at least ninety (90) percent of the standards in a technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the department under the following standards:

1. For previously mined areas that were not reclaimed to the requirements of Title 405, Chapters 16 through 20, the ground cover of living plants shall not be less than 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:210E. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:220E. Roads.

RELATES TO: KRS 350.020, 350.028, 350.085, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: May 14, 1982
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 subparagraph 1 of this paragraph 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 subparagraph 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 16:250E. Other facilities.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:070E. Water quality standards and effluent limitations.

RELATES TO: KRS 350.020, 350.090, 350.100, 350.151, 350.405, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
EFFECTIVE: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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 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 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:090E. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.151, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:100E. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.455, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:120E. Use of explosives.

RELATES TO: KRS 350.151, 350.430
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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 required for control of erosion or for roads included in the approved post-mining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall

be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 5. Disposal on Existing Benches. (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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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) The responsible registered professional engineer shall certify to the department within two (2) weeks after each inspection that the coal processing waste bank has been constructed as specified in the design approved by the department. 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:150E. Disposal of waste other than coal processing waste, soil or rock.

RELATES TO: KRS 350.020, 350.090, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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 non-combustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, and other materials identified by the department as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land use.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:210E. Subsidence control.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:220E. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

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

(1) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(2) To conditions capable of supporting higher or better alternative uses of which there is reasonable likelihood, as approved by the department under Section 4.

Section 2. Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.

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

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

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses. The determination of minimum acceptable postmining land use capability shall be based upon the potential utility

of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from underutilization.

Section 4. Alternative Postmining Land Use. Alternative postmining land uses may be approved by the department after consultation with the landowner or the land management agency having jurisdiction over the lands, if the criteria of this section are met:

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

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

(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained prior to the final release of bond liability for the permit area.

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

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

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

(5) Plans for the postmining land use 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:230E. Roads.

RELATES TO: KRS 350.020, 350.028, 350.085, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
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 subparagraph 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 18:260E. Other facilities.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 20:070E. Offsite coal processing plants and support facilities.

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
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
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 20:080E. In situ processing.

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.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: May 14, 1982
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 objective 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 objective 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 and objective 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 objective 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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 24:030E. Process and criteria for designating lands unsuitable for surface mining operations.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
EFFECTIVE: May 14, 1982
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 objective evidence. If the petition does not contain new and substantial allegations of facts, the department shall return the petition with a statement of its findings and a reference to the record of the previous designation proceedings.

(6) Petitions received after the close of the public comment period on a permit application relating to the same area shall not prevent the department from issuing a decision on that permit application. The department may return such a petition to the petitioner with a statement of why the department will not consider the petition. For the 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, telephone number, and notarized signature;

(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 objective 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.

Section 9. Administrative and Judicial Review. (1) Following any order or determination of the department concerning completeness or frivolousness of a petition, any person with an interest which is or may be adversely affected may request a hearing on the reasons for the order or determination, in accordance with 405 KAR 7:090E. Any person with an interest which is or may be adversely affected and who has participated in an administrative hearing under this subsection shall have the right to judicial review as provided in KRS 350.610(6).

(2) Any person with an interest which is or may be adversely affected by a final decision of the secretary under Section 8(6) shall have the right to judicial review as provided in KRS 350.610(6).

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

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

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

405 KAR 24:040E. Permit application review.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
EFFECTIVE: May 14, 1982
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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-278
April 15, 1982

EMERGENCY REGULATION
Cabinet for Public Protection and Regulation
Changes in Notice Provision of the Tariff Regulation

WHEREAS, the Public Service Commission is authorized pursuant to KRS 278.040(3) to adopt reasonable regulations to implement the provisions of KRS Chapter 278; and
WHEREAS, the Public Service Commission's emergency regulations now in effect pursuant to Executive Order 81-216 of March 4, 1981 will expire April 15, 1982 upon the sine die adjournment of the General Assembly; and
WHEREAS, the next meeting of the Administrative Regulation Review Subcommittee is May 5, 1982 and the Public Service Commission will be without a regulation for the period April 15, 1982 until May 5, 1982, or until such time as the Administrative Regulation Review Subcommittee acts upon the proposed regulation; and
WHEREAS, the Public Service Commission has determined that an emergency exists and that there is an immediate need to implement the notice provisions of its tariffs regulation 807 KAR 5:011E; and
WHEREAS, the Public Service Commission will be unable to maintain the continuity of its regulatory procedures without this regulation; and
WHEREAS, the Secretary of the Cabinet for Public Protection and Regulation, in conjunction with the Public Service Commission pursuant to KRS 13.082 and KRS 278.040, has promulgated this regulation:
NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by the authority vested in me by KRS 13.085(2) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Public Service Commission within the Cabinet for Public Protection and Regulation that an emergency exists and direct that the attached regulation 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

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:011E. Tariffs.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.160(1)
EFFECTIVE: April 16, 1982
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:
(1) 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.

(2) 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:

(a) Shall be included with customer billings made on or before the application is filed with the Commission; *or*

(b) Shall be published by such date in a trade publication or newsletter going to all customers; or

(c) 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.

(3) Notice as to intervention. The notice made in compliance with subsection (2) above shall include a statement to the effect:

(a) That any corporation, association, body politic or person may by motion within thirty (30) days after *publication or mailing of* [receiving] notice of the proposed rate changes request leave to intervene;

(b) 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

(c) That *intervenors may obtain* copies of the application and testimony [may be obtained] by contacting the applicant at a name and address to be stated in the notice. *A copy of the application and testimony shall be available for public inspection at the utility's offices.*

(4) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by subsection (2)(a) *or* [and] (b) 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.

(5) 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.

(6) 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 *if the Commission determines that there was a substantial omission, which was prejudicial to full consideration by the Commission or to an intervenor.*

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 (Title of Officer) _____ 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 the _____ day of _____, 19____, issued its *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.

**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: April 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-273
April 14, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible, under KRS 194.050 and KRS 205.520, for promulgating, by regulation, the policies of the Department with regard to the provision of Medical Assistance; and

WHEREAS, the Secretary has found that, at the current rate of spending, the Department will incur a deficit which necessitates reductions in the Department's budget to bring spending in line with appropriation; and

WHEREAS, the Secretary has found that to reduce the rate of spending it is necessary to implement a new regulation concerning payments for hospital inpatient services; and

WHEREAS, the Secretary has promulgated a regulation on Payments for Hospital Inpatient Services which provide for the establishment of a uniform rate year, peer grouping of hospitals with upper limits by peer group, and application of an occupancy factor by peer group; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.085(2), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation on Payments for Hospital Inpatient Services, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

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

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:013E. Payments for hospital inpatient services

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: April 16, 1982
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the department for hospital inpatient services.

Section 1. Hospital Inpatient Services. *The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in comformity with applicable state and federal laws, regulations, and quality and safety standards.* [The department shall reimburse participating hospitals for hospital inpatient services on the basis of reasonable cost.]

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the department in setting payment rates are specified in the department's "Inpatient Hospital Reimbursement Manual" which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the department will apply the Medicare standards and principles described in 42 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

[Section 2. Determination of Reasonable Cost. The department shall determine reasonable cost in the following manner: (1) To determine the reasonable cost for each hospital participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the department shall apply the same standards, cost reporting period, cost reimbursement principles, and the method of cost apportionment currently applicable to such hospitals under Title XVIII; however, the inpatient routine service costs for medical assistance recipients shall be determined subsequent to the application of the Title XVIII method of apportionment and the calculation shall exclude the applicable Title XVIII inpatient routine service charges under

the departmental method or patient days under the combination methods as well as Title XVIII inpatient routine service costs (including any nursing salary cost differential).]

[(2)To determine the reasonable cost for each hospital not participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the department will apply the standards and principles described in 20 CFR sections 405.402 through 405.455 (excluding the inpatient routine nursing salary cost differential) and either of the following, depending on the bookkeeping methods and preference of the hospital involved:]

[(a) One of the available alternative cost apportionment methods in 20 CFR section 405.404.]

[(b) The "Gross Reasonable Cost Compared to Actual Charges Method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient costs are divided by the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient.]

Section 3. Compliance with Federal Medicaid Requirements. The department will comply with the requirements shown in 42 CFR 447.250 through 447.272.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. The prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the department of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the department from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the department, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending capital costs and return on equity capital are excluded, the trending factor to be used will be derived from the percentage of change in the aggregate per diem cost of all participating hospitals between the last two (2) state fiscal years preceding the rate year. In determining this trending factor, only cost reports relative to the two (2) fiscal years being compared will be utilized.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc.

(5) Peer grouping. Hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, and 201 beds and up.

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupany factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of upper limits. An upper limit will be established on all costs (except equity return and Medicaid capital cost) at 110 percent of the weighted median per diem cost for hospitals in each peer group, using the latest available cost data; upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. Exceptions have been made for the University of Kentucky and University of Louisville hospitals in recognition of special costs relating to the educational functions. For these two (2) hospitals, the upper limit is established at 150 percent of the weighted median cost. In addition, the upper limit is established at 120 percent for those hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served).

(8) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Implementation Date. This payment system shall be implemented March 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: April 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-275
April 15, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible, under KRS 194.050 and KRS 205.520, for promulgating, by regulation, the policies of the Department with regard to the provision of Medical Assistance; and

WHEREAS, the Department and the Kentucky Association of Health Care Facilities have entered into an agreement to resolve a court action brought by the Association against the Department; and

WHEREAS, the Secretary has found that the terms of the agreement must be implemented by regulation; and

WHEREAS, the Secretary has promulgated a regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services which sets a uniform rate year for facilities, updates costs to the beginning of the rate year, and removes the upper limit on payments to intermediate care facilities for the mentally retarded; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore,

said regulation should, pursuant to the provisions of KRS 13.085(2), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

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

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:036E. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: April 16, 1982

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the department for skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR *447.250* [447.272] through 42 CFR *447.272* [447.316]. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application or the reimbursement principles developed by the department and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The department's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The department's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the department. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. *The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of April 30 of each year and trending the facility costs to July 1 of the rate year. (Unaudited and/or budgeted cost data may be used if a full year's audited data is unavailable.) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 110 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 110 percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1982, so that the maximum payment amount for the prospective uniform rate year will be at 110 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.* [Such maximum payment rate may be reviewed annually by the department and may be adjusted as deemed appropriate with consideration given to the factors of facility costs, program objectives and budgetary resources.]

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in

the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges, or where an evaluation by the department of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the department will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (newly participating facilities), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for property costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities when *either* [any] of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant[;] or, second, when a multi-level facility (one providing more than one (1) type of care, converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of *additional or* converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. [; or, third, when the facility changes ownership. (However, stock transfers which are not considered changes of facility ownership, or changes of ownership based on sales or purchase agreements entered into prior to April 1, 1981, and which are finalized by transfer of legal ownership prior to October 1, 1981, shall not cause the facility to be classified as a newly participating facility for purposes of this subsection.)] *Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.*

[(c) Effective May 1, 1981, the following additional upper limit (within the class) shall be applicable with regard to otherwise allowable costs, by cost center, for all facilities (except ICF-MRs): for administrative and general and owner's compensation (combined), the upper limit shall be 105 percent of the median per diem cost.]

(c) [(d)] For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the clsss) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted *by trending, indexing* [for the inflation] and *the* occupancy factor[s]. The median for each cost center for each class shall be determined annually using the *same* [latest] cost data [available] for the class *which was used in setting the maximum payment amount.* The Division for Medical Assistance shall notify all participating facilities of the median *per diem cost center* upper limits currently in effect.

(d) [(e)] Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include [membership dues,] political contributions, the cost of travel outside the state (and all costs related thereto), and legal fees for unsuccessful lawsuits

against the department.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (⅔) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Stock transfers, except stock transfers followed by liquidation of all company assets and which may be revalued in accordance with Internal Revenue Service rules, are not considered changes of facility ownership. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(11) Each facility shall maintain and make available such records (in a form acceptable to the department) as the department may require to justify and document all costs to and services performed by the facility. The department shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Departmental approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13) The department shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the department will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying prior year cost to be used in setting the new prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(15) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the department).

(16) The department may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the department to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(17) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. [The department shall, under normal circumstances, be expected to determine the prospective rate and make notification to the facility within an additional sixty (60) days after actual receipt of the required documents. These] *This* time limit[s] may be extended [as necessary for the procuring of additional documentation, resolution of disputed facts,] at the specific request of the facility (with the department's concurrence)[, and at such times as the rate review and appeal process is utilized by a facility and the determination and/or notification is held awaiting completion of that process]. *The department may also require, as necessary, that facilities whose cost report does not cover a full facility fiscal year shall submit an interim and/or budgeted cost report by April 30 to be used in setting the prospective rate for the facility for the next unform rate year.*

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be *trended to the beginning of the uniform rate year and* increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The department may impose a lower occupancy rate for newly constructed or newly participatingfacilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The department may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will

then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective *7-1-81* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$24.99 & below [$21.99 & below]*	—	—
25.00 - 25.99 [22.00 - 22.99]	$1.38	$ .87
26.00 - 26.99 [23.00 - 23.99]	1.29	.75
27.00 - 27.99 [24.00 - 24.99]	1.18	.62
28.00 - 28.99 [25.00 - 25.99]	1.06	.47
29.00 - 29.99 [26.00 - 26.99]	.92	.31
30.00 - 30.99 [27.00 - 27.99]	.76	.13
31.00 - 32.55 [28.00 - 28.99]	.53	—

Maximum Payment *$32.55* [$29.80]

* For a basic per diem of *$24.99* [$21.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective *1-1-82* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$29.99 & below*	—	—
30.00 - 31.99	$1.38	$ .87
32.00 - 33.99	1.29	.75
34.00 - 35.99	1.18	.62
36.00 - 37.99	1.06	.47
38.00 - 39.99	.92	.31
40.00 - 41.99	.76	.13
42.00 - 43.99	.53	—

[Maximum Payment $90.00]

* For a basic per diem of $29.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective *10-1-81* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$31.99 & below [$28.99 & below]*	—	—
32.00 - 33.99 [29.00 - 30.99]	$1.38	$ .87
34.00 - 35.99 [31.00 - 32.99]	1.29	.75
36.00 - 37.99 [33.00 - 34.99]	1.18	.62
38.00 - 39.99 [35.00 - 36.99]	1.06	.47
40.00 - 41.99 [37.00 - 38.99]	.92	.31
42.00 - 43.99 [39.00 - 40.99]	.76	.13
44.00 - 45.99 [41.00 - 42.99]	.53	—

Maximum Payment *$48.75*** [$45.00**]

* For a basic per diem of *$31.99* [$28.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

** The maximum payment for hospital based skilled nursing facilities *is set at $75.65* [was initially set at $80.00, such amount to be adjusted as shown in Section 4(6)].

(6) The prospective rate is then compared, *as appropriate,* with the maximum payment. [This shall be twenty-nine dollars and eighty cents ($29.80) per patient per day for routine services for the period beginning 4/1/81 for general intermediate care facilities; ninety dollars ($90) per patient per day for routine services for the period beginning 4/1/81 for intermediate care facilities for the mentally retarded, and forty-five dollars ($45) per patient per day for routine services for the period beginning 12/1/79 for non-hospital based skilled nursing facilities. The maximum payment shall be eighty dollars ($80) per patient per day for routine services for the period beginning 12/1/79 for hospital based skilled nursing facilities, the rate to be adjusted proportionately in relation to the non-hospital based skilled nursing facility maximum payment so that the rates will be identical after a period of five (5) years (beginning 12/1/79).] If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 110 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities [and intermediate care facilities for the mentally retarded] have special requirements that must be considered. [Current maximum payment rates are somewhat in excess of 110 percent since the department is allowing for a period of adjustment from the prior method of determining the maximum payment rates.] The department has determined that the maximum payment rates shall be reviewed annually against the criteria of 110 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1982 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 110 percent of the median is a lower dollar amount than has been currently set.

Section 5. Rate Review and Appeal. Participating facilities may appeal departmental decisions as to applica-

tion of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division for Medical Assistance, a re-evaluation of the point at issue. This request must be received within twenty (20) days following notification of the prospective rate by the program. The director shall review the matter and notify the facility of any action to be taken by the department (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Bureau for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division for Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division for Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Center for Program Development, Bureau for Social Insurance. *A date for the rate review panel to convene will be established* [The panel shall meet to consider the issue] within fifteen (15) days after receipt of the written request. *[, and] The panel* shall issue a binding decision on the issue within *ten (10)* [five (5)] days of the hearing of the issue. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the department's expense.

Section 6. Definitions. For purposes of Sections 1 through 6, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the department in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the department, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including urethral catheters, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the department's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable [prior year] costs are *trended and* adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable [prior year] routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable [prior year] costs, including fixed or capital costs, yields projected current year allowable costs.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the department will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on *allowable* [prior year] costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the department.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

Section 7. Implementation of Uniform Rate Year. The first uniform rate year shall be July 1, 1981-June 30, 1982. For general ICFs, payments based on the uniform rate year shall begin effective July 1, 1981. For SNFs, payments based on the uniform rate year shall begin effective October 1,

1981. For ICF-MRs, payments based on the uniform rate year shall begin effective January 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: April 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-277
April 15, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible under the provisions of KRS Chapters 194 and 205 for promulgating, by regulation, the policies of the Department with regard to the provision of Aid to Families with Dependent Children and the provision of Medical Assistance; and

WHEREAS, federal law with respect to those programs has been amended, effective October 1, 1981; and

WHEREAS, at the current rate of spending the Department will incur a deficit which necessitates reductions in the Department's budget to bring spending in line with appropriation; and

WHEREAS, the Secretary has found that, to reduce the rate of spending and to conform to federal law, it is necessary to implement new regulations governing eligibility for the Aid to Families with Dependent Children; and

WHEREAS, the Secretary has promulgated a regulation on Standards for Need and Amount; AFDC; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.085(2), become effective upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation on Standards for Need and Amount; AFDC, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

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

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:016E. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS 13.082, 205.200(2)
EFFECTIVE: April 16, 1982
NECESSITY AND FUNCTION: The Department for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006E, Section 3. The incapacitated natural or adoptive parent of the child(ren) who is living in the home and legally married to the specified relative may be included as second parent if the technical eligibility factors are met. The decision regarding application for or continued inclusion of an individual child rests with the parent or other specified relative.

(2) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(3) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month.

(4) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(5) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

Section 2. Resource Limitations. The amount of real and personal property that can be reserved by each assistance unit shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed $1,500 equity value;

(e) Farm machinery, livestock, and tools and equipment other than farm, used in a self-employment enterprise; and

(f) Items valued at less than fifty dollars ($50) each.

(2) Disposition of resources. An applicant/recipient must not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the application is denied or assistance discontinued. The time period of ineligibility shall be based on the amount of excess transferred property and begins with the month of transfer. If the amount of excess transferred property does

not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of natural parent(s), and stepparent(s) living in the home, shall not exceed 150 percent of the assistance standard set forth in Section 8. Disregards specified in Section 4, subsection (1), shall apply. If total gross income exceeds the 150 percent income limitation standard as shown below, the assistance group is ineligible.

Number of Eligible Persons	Monthly Gross Income Limitation Standard
1 Child	$200
2 Persons	$243
3 Persons	$282
4 Persons	$353
5 Persons	$413
6 Persons	$465
7 or more Persons	$518

(2) Applicant eligibility test. If the gross income is below 150 percent of the assistance standard and the applicant has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4, subsections (1) and (2), shall be compared to the assistance standard set forth in Section 8. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4, subsections (1), (2), and (3). If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established for recipients whose income exceeds the limits set forth in subsections (1) or (3) of this section in accordance with 45 CFR 233.20(a)(3)(D).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received, in the month of application or redetermination, by the assistance group, natural parent(s) and/or stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test.

(a) Disregards applicable to stepparent income, as set forth in Section 5;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v) and 45 CFR 233.20(a)(11)(i)(b)(1)(i);

(d) Work Incentive Program (WIN) and Comprehensive Employment and Training Act Program (CETA) incentive payments;

(e) Reimbursement for training-related expenses made by a manpower agency to applicants in institutional and work experience training;

(f) Value of food coupons;

(g) Non-emergency medical transportation payments;

(h) Principal of loans obtained to meet needs not included in the assistance plan, e.g., home repair, farm expansion;

(i) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans administered by the United States Commissioner of Education;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce for household consumption;

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

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

(p) Any funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(q) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(s) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113;

(t) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(u) Any payment from the Department for Human Resources, Bureau for Social Services, for child foster care, adult foster care, or subsidized adoption;

(v) Energy assistance payments;

(w) Earned income tax credit payments.

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

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

(b) Earnings received from participation in Job Corps by an AFDC child;

(c) Earnings of a child in full-time school attendance or in half-time school attendance, if not working full time;

(d) Standard work expense deduction of seventy-five dollars ($75) for full-time employment. A forty dollar ($40) deduction is allowed for part-time employment; and

(e) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed $160 per month for full-time employment or $110 per month for part-time employment.

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2), as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty dollars ($30) and one-third (⅓) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. This disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/her earned income unless he/she has not been a recipient for twelve (12) consecutive months in accordance with 45 CFR 233.20(a)(11)(ii).

(4) Exceptions. Disregards in subsection (2)(d) and (e) and subsection (3)(b) shall not apply in accordance with 45 CFR 233.20(a)(11)(iii) in any instance where an individual, without good cause:

(a) Reduces or terminates employment; or

(b) Refuses to accept employment; or

(c) Requests assistance be terminated for the sole purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

Section 5. Stepparent Income and Resources. (1) Income. The gross income of a stepparent living in the home is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five dollars ($75) of the gross earned income of the stepparent who is employed full time or the first forty dollars ($40) of the gross earned income of the stepparent who is employed part time;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability;

(c) Any amount actually paid by the stepparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent receiving Supplemental Security Income under Title XVI.

(2) Resources. Resources belonging exclusively to the stepparent are deemed available to the natural parent and considered in determining eligibility of the natural parent for inclusion in the assistance group. Resources of a stepparent receiving SSI under Title XVI shall not be considered.

Section 6. Alien Income and Resources. The gross non-AFDC income and resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor and spouse is considered available to the assistance group subject to the following disregards:

(a) Twenty percent (20%) of the total monthly gross earned income, not to exceed $175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are claimed by the sponsor as dependents in determining his/her federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to non-household members who are claimed as dependents in determining his/her federal personal income tax liability; and

(d) Actual payments of alimony or child support paid to non-household members.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he/she were an AFDC applicant, less $1,500.

Section 7. Earned Income Tax Credit. In the case of an applicant or recipient of AFDC, earned income shall include the amount of advance payments of the earned income credit for which he/she is eligible determined in accordance with 45 CFR 233.20(a)(6)(ix).

Section 8. Assistance Standard. The AFDC assistance standard, including amounts for food, clothing, shelter, utilities and non-medical transportation from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Number of Eligible Persons	Monthly Standard
1 Child	$133
2 Persons	$162
3 Persons	$188
4 Persons	$235
5 Persons	$275
6 Persons	$310
7 or more Persons	$345

Section 9. Foster Care. (1) Payment rates. Payment rates are based on the Department for Human Resources per diem payment rates. The department's rates are based on the age and needs of the child.

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

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

(b) A child in a private child caring institution who is eligible for AFDC foster care payments receives payment in one (1) of the following monthly amounts according to

the child's age and needs assessment (as determined by the Bureau for Social Services):

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

(2) Income limitations. Gross income shall not exceed 150 percent of the payment rate set forth in subsection (1). If that gross income exceeds the 150 percent income limitation standard as shown below, the child(ren) is ineligible.

	Foster Family Care			Institutional Care	
Age	Regular	Special	Extraordinary	Regular	Special
0-5	$216	$251	$342	$227	$318
6-12	240	275	342	263	318
13+	263	297	342	288	318

Section 10. 904 KAR 2:010, AFDC; standards for need and amount, is hereby repealed.

JOHN CUBINE, Commissioner
ADOPTED: April 13, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-270
April 14, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating by regulation the policies of the Department with respect to the provision of the Home Energy Assistance Program; and

WHEREAS, the Secretary has promulgated a regulation increasing income and resource eligibility criteria in the Home Energy Assistance Program; and

WHEREAS, additional federal funds have been received for the Home Energy Assistance Program and a larger number of households can be served; and

WHEREAS, the time delays inherent in complying with procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation during the winter months; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation, and that, therefore, said regulation should, in accordance with the provisions of KRS 13.085(2), be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of an emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation of the Department for Human Resources providing for the Home Energy Assistance Program, and direct that said regulation shall become effective upon filing with the Legislative Research Commission as provided in Chapter 13 of Kentucky Revised Statutes.

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

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:100E. Home energy assistance program; eligibility, criteria.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: April 16, 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 *living in nonsubsidized housing* 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 *for Applications Taken through March 21, 1982*

Family Size	Monthly	Yearly
1	$359	$4,310
2	474	5,690
3	589	7,070
4 or more	704	8,450

Income Scale for Applications Taken from March 22 through April 15, 1982

Family Size	*Monthly*	*Yearly*
1	*$ 539*	*$ 6,465*
2	*711*	*8,535*
3	*884*	*10,605*
4 or more	*1,056*	*12,675*

(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) *For applications taken through March 19, 1982* the household must have total liquid assets at the time of application of not more than $3,000. *For applications taken on or after March 22, 1982, total liquid assets cannot exceed $5,000.* 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	Payment Amount: 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	Payment Amount: 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 noncontinuous 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, *and ending no later than April 15, 1982, at the close of business.*
(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) *Up to* 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 the poverty level. Funds unspent by the close of business February 28, 1982, shall be available for use statewide.
(4) As prescribed by the Secretary, up to $150,000 of administrative 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.

JOHN CUBINE, Commissioner
ADOPTED: March 23, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-274
April 14, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating by regulation the policies of the Department with respect to the Unemployment Insurance Program; and
WHEREAS, the amount of wages paid in a calendar year to a worker and subject to unemployment insurance contributions has been increased from six thousand dollars ($6,000) to eight thousand dollars ($8,000) pursuant to Section 1 of House Bill 746; and
WHEREAS, Section 10 of House Bill 746 provides that such increase in the wage base shall become effective January 1, 1982; and
WHEREAS, due to such increase a burden is placed upon employers throughout the Commonwealth in preparing unemployment insurance contribution reports due for the first quarter of 1982; and
WHEREAS, the time delays inherent in complying with procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation for the first quarter of 1982; and
WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, in accordance with the provisions of KRS 13.085(2), be effective immediately upon filing with the Legislative Research Commission:
NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of an emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation of the Department for Human Resources providing for an extended due date for

unemployment insurance contributions for the first quarter of 1982, and direct that said regulation shall become effective upon filing with the Legislative Research Commission as provided in Chapter 13 of the Kentucky Revised Statutes.

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

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 5:030E. Employer contributions.

RELATES TO: KRS 341.260
PURSUANT TO: KRS 13.082, 194.050, 341.115
EFFECTIVE: April 16, 1982
NECESSITY AND FUNCTION: This regulation sets the due date upon which employer contributions are payable to the division.

Section 1. *Except as provided by Section 7 of this regulation,* contributions shall become due on or before the last day of the month following the close of the calendar quarter for which they are payable.

Section 2. The first contribution payment of any employing unit which becomes a subject employer at any time during a calendar quarter, shall become due on or before the last day of the month following the close of the quarter in which such employing unit became a subject employer, and shall include contributions which have accrued for the entire period beginning January 1 of the calendar year and including the calendar quarter in which the employing unit became a subject employer.

Section 3. Contributions required under KRS 341.290 shall become payable on the basis of calendar years. Such contributions shall become due on February 28, of the year following the year for which they are payable.

Section 4. Notwithstanding the provisions of Sections 1, 2, [and] 3 *and 7* of this regulation, in the event a subject employer has erroneously paid to another state or to a federal agency contributions due under KRS Chapter 341, the due date of such contributions shall be extended by the number of calendar days between the date such contributions were erroneously paid to such other agency and the date the secretary determines such contributions were payable under KRS Chapter 341; provided, however, if such contributions have been refunded by such other agency to such subject employer prior to the date of the secretary's determination, the due date shall be extended only for the number of calendar days between the date of such erroneous payment and the date of such refund.

Section 5. Contributions shall not be considered paid until the required contribution and wage reports have been received by the Division for Unemployment Insurance or which have been deposited in the mail on or before the due date as indicated by the postmark thereon.

Section 6. For the purpose of this regulation, when the due date falls on a day during which the office of the division is closed, the next day thereafter on which such office is open shall be considered the due date and contributions and reports which have been deposited in the mail on or before the due date, as indicated by the postmark thereon, shall be considered as timely filed.

Section 7. Contributions and reports for the first quarter of 1982 shall become due on or before May 17, 1982.

JOHN CUBINE, Commissioner
ADOPTED: April 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 16, 1982 at 12:00 Noon.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-375
May 14, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating by regulation the policies of the Department with respect to the Unemployment Insurance Program; and

WHEREAS, the amount of wages paid in a calendar year to a worker and subject to unemployment insurance contributions has been increased from six thousand dollars ($6,000) to eight thousand dollars ($8,000) pursuant to Section 1 of House Bill 746; and

WHEREAS, Section 10 of House Bill 746 provides that such increase in the wage base shall become effective January 1, 1982; and

WHEREAS, due to such increase a burden is placed upon employers throughout the Commonwealth in preparing unemployment insurance contribution reports due for the first quarter of 1982; and

WHEREAS, employers are required to pay an increased amount of contributions as a result of the increase in the wage base; and

WHEREAS, the time delays inherent in complying with procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation for the first quarter of 1982; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, in accordance with the provisions of KRS 13.085(2), be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of an emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation of the Department for Human Resources providing for an extended due date for unemployment insurance contributions for the first quarter of 1982, and direct that said regulation shall become effective upon filing with the Legislative Research Commission as provided in Chapter 13 of the Kentucky Revised Statutes.

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

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 5:030E. Employer contributions.

RELATES TO: KRS 341.260
PURSUANT TO: KRS 13.082, 194.050, 341.115
EFFECTIVE: May 14, 1982
NECESSITY AND FUNCTION: This regulation sets the due date upon which employer contributions are payable to the division.

Section 1. *Except as provided by Section 7 of this regulation,* contributions shall become due on or before the last day of the month following the close of the calendar quarter for which they are payable.

Section 2. The first contribution payment of any employing unit which becomes a subject employer at any time during a calendar quarter, shall become due on or before the last day of the month following the close of the quarter in which such employing unit became a subject employer, and shall include contributions which have accrued for the entire period beginning January 1 of the calendar year and including the calendar quarter in which the employing unit became a subject employer.

Section 3. Contributions required under KRS 341.290 shall become payable on the basis of calendar years. Such contributions shall become due on February 28, of the year following the year for which they are payable.

Section 4. Notwithstanding the provisions of Sections 1, 2, [and] 3 *and 7* of this regulation, in the event a subject employer has erroneously paid to another state or to a federal agency contributions due under KRS Chapter 341, the due date of such contributions shall be extended by the number of calendar days between the date such contributions were erroneously paid to such other agency and the date the secretary determines such contributions were payable under KRS Chapter 341; provided, however, if such contributions have been refunded by such other agency to such subject employer prior to the date of the secretary's determination, the due date shall be extended only for the number of calendar days between the date of such erroneous payment and the date of such refund.

Section 5. *Except as provided by Section 7 of this regulation,* contributions shall not be considered paid until the required contribution and wage reports have been received by the Division for Unemployment Insurance or which have been deposited in the mail on or before the due date as indicated by the postmark thereon.

Section 6. For the purpose of this regulation, when the due date falls on a day during which the office of the division is closed, the next day thereafter on which such office is open shall be considered the due date and contributions and reports which have been deposited in the mail on or before the due date, as indicated by the postmark thereon, shall be considered as timely filed.

Section 7. Contributions and reports for the first quarter of 1982 shall become due as follows:

(1) Contributions in the amount which would have been due under former law before House Bill 746 of the 1982 General Assembly became effective shall become due on or before May 17, 1982.

(2) Contributions in the amount of the increase provided by House Bill 746 of the 1982 General Assembly shall become due on or before July 16, 1982.

(3) All contribution and wage reports shall become due on or before May 17, 1982, covering contributions mentioned in subsections (1) and (2) of this section.

JOHN CUBINE, Commissioner
ADOPTED: May 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: May 14, 1982 at 4:30 p.m.

Amended Regulation Now in Effect

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
As Amended

806 KAR 38:060. Cancellation of enrollees' coverage.

RELATES TO: KRS 304.38-180(2)
PURSUANT TO: KRS 304.2-110, 304.38-180(2), 304.38-150
EFFECTIVE: May 5, 1982
NECESSITY AND FUNCTION: KRS 304.38-180(2) prohibits cancallation by a health maintenance organization of an enrollee's coverage except for failure to pay for such coverage or for such other reasons as may be promulgated in regulations issued by the Commissioner. This regulation establishes the grounds for cancellation of coverage and the procedures to be followed.

Section 1. Grounds for disenrollment. No health maintenance organization licensed under KRS 304.38-010, et seq. shall disenroll any enrollee for any reason other than one (1) or more of the following:

(1) Nonpayment of subscriber fees. Coverage may be terminated if the enrollee fails to make timely payment of a subscriber fee when due; provided, however, that such termination will be without prejudice to any claim originating while the coverage is still in force.

(2) Misrepresentation. Coverage may be terminated if it is found that an enrollee's application contains material misrepresentations designed to cause the plan to issue the coverage when it would not have ordinarily done so.

(3) Dependent child. A dependent child's enrollment may be terminated upon any of the following occurrences:

(a) Marriage;

(b) Attainment of the limiting age in the contract, *except as otherwise provided by this regulation*;

(c) Termination of legal residence with the enrollee;

(d) Determination that the child, *who had become disabled prior to attaining a limiting age in the contract and whose disability had continued beyond such limiting age*, is no longer totally disabled;

(e) Valid termination of the enrollee's coverage; or

(f) Termination of the child's dependent status as defined by the Internal Revenue Code of the United States.

(4) Spouse. Coverage for a spouse may terminate on the date the enrollee is legally divorced from his or her spouse.

(5) Group contract. Termination of a group contract may automatically terminate all group members' coverage as of the date of termination.

(6) Medicare eligibility. Coverage under a basic contract may terminate upon an enrollee's eligibility for Medicare provided the enrollee is offered the option of converting to a Medicare supplement policy.

(7) Moving out of the service area. An enrollee may be terminated whenever he no longer has a residence or works in the service area.

(8) Disregard rules. Coverage may be terminated if an enrollee fails to abide by the terms of the subscription agreement and in doing so prevents the organization from providing service to himself or other enrollees in a reasonable manner.

Section 2. Conversion Rights. No enrollee covered under a group contract or certificate and subject to KRS 304.38-191, 304.38-192 and 304.18-110 shall be terminated for any of the reasons set out in Section 1, subsections (3), (4), (5) or (6) of this regulation unless he fails to exercise his conversion rights under KRS 304.38-192 and 304.18-110.

Section 3. Disenrollment Procedures. (1) No enrollee may be disenrolled unless prior thereto he has been given written notice thirty-one (31) days in advance of the disenrollment.

(2) Such notice must be specific as to the reason for such disenrollment, and shall inform the enrollee of his right to appeal the disenrollment to the Commissioner of Insurance by filing a written objection thereto with the Commissioner within ten (10) days of receiving notice.

(3) If the Commissioner finds after a hearing that the enrollee's disenrollment is not valid, the enrollee's coverage will be ordered reinstated without interruption of coverage; and

(4) Upon a find that the enrollee's coverage was unjustifiably terminated, all costs of the proceeding may be assessed against the health maintenance organization. In addition, such a finding may constitute grounds for suspension or revocation of the health maintenance organization's certificate of authority as provided in KRS 304.38-130 or an administrative fine in lieu thereof pursuant to KRS 304.2-140.

DANIEL D. BRISCOE, Commissioner
ADOPTED: February 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: February 12, 1982 at 9 a.m.

Amended After Hearing

(Republished prior to Subcommittee consideration as required by KRS 13.085(4).)

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

405 KAR 30:025. Experimental practices.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation governs the *permitting of experimental practices that propose a hypothetical problem which can be proven true or false by the experimental practice; and will yield useful information to the department about agricultural, environmental, technological and post-mining land use problems relating to oil shale operations* [granting and approval of experimental 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 oil shale 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, Chapter 30, and such variance is not otherwise obtainable under Title 405, Chapter 30.

(2) This regulation sets forth requirements for the permitting of oil shale 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, Chapter 30, 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.

(2) Application requirements. Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the department. 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, and public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the regulations of Title 405, Chapter 30.

(c) That the oil shale 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 oil shale operations, as those required under Title 405, Chapter 30; and

2. Will not reduce the protection afforded public health and safety below that provided by the requirements of Title 405, Chapter 30.

(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 to make adequate comparisons with other oil shale operations employing similar experimental practices; and

2. Include requirements designed to identify, as soon as possible, potential risks to the environmental 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, Chapter 30 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 30:130, Section 5.

(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 30, 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; and

(c) The permit contains conditions which specifically:

1. Limit the experimental practice authorized to that granted by the department;

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 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 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 30:020.

JACKIE SWIGART, Secretary
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 11, 1982 at 3:30 p.m.

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

405 KAR 30:035. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the general requirements for performance bonds and liability insurance.

Section 1. Applicability. This regulation sets forth the minimum requirements for filing and maintaining performance bonds and insurance for oil shale operations.

Section 2. Requirement to File a Bond. (1) After an application for a new, revised or renewed permit to conduct oil shale operations has been approved but before such permit is issued, the applicant shall file with the department a performance bond payable to the department. A condition of the performance bond will be the faithful completion of all the requirements of the applicable statutes, the pertinent regulations promulgated pursuant thereto, and the provisions of the reclamation plan and permit.

(2) The performance bond liability shall apply to all oil shale operations and related activities conducted within the permit area. Liability shall continue until requirements established by the department have been met. After the amount of the bond has been determined for the permit area, the permittee or applicant shall file the *performance bond in accordance with Section 4* [entire performance bond required during the term of the permit].

Section 3. Requirement to File a Certificate of Liability Insurance. Each applicant shall file as a part of the permit application evidence that the applicant has obtained liability insurance.

Section 4. 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 30:070 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 405 KAR 30:130 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 30:040.

(c) The permittee shall not engage in any oil shale 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 30:070.

(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 405 KAR 30:130, 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 30:040.

(c) The permittee shall not engage in any oil shale 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 30:070, the increment shall be deleted from the permit area.

JACKIE SWIGART, Secretary
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 11, 1982 at 3:30 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Amended After Hearing

806 KAR 12:070. Life insurance application requirements.

RELATES TO: KRS 304.14-090, 304.14-120
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. This regulation requires that an application for life insurance which was personally solicited by an agent *have the location where the application was signed,* be signed by the applicant, and further requires the agent to witness this signature [and to certify that the agent propounded each question to the applicant and accurately recorded the applicant's answers].

Section 1. Every application for life insurance solicited personally by an agent shall have the location where the application is signed *and* [,]the applicant's signature witnessed by the soliciting agent[, who shall at that time certify that each question thereon was propounded by him personally to the applicant and that the applicant's answers thereto have been accurately recorded thereon].

DANIEL D. BRISCOE, Commissioner
ADOPTED: May 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 14, 1982 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Amended After Hearing

806 KAR 17:060. Minimum standards for medicare supplement policies.

RELATES TO: KRS *304.14-510, 304.32-270, 304.38-200* [304.17-400]
PURSUANT TO: KRS 304.2-110, *304.14-510, 304.32-270, 304.38-200* [304.17-400]
NECESSITY AND FUNCTION: This regulation applies to all individual *and group* Medicare supplement and accident and sickness insurance policies and Medicare supplement subscriber contracts delivered or issued for delivery in this state on and after the effective date hereof. KRS *304.14-510* [304.17-400] provides that the Commissioner of Insurance may make reasonable rules or regulations to establish minimum standards for Medicare supplement insurance policies delivered or issued for delivery to any person in this state *and all certificates issued under group Medicare supplement policies or subscriber policies in this state.* This regulation establishes the minimum standards for Medicare supplement insurance.

Section 1. Definitions. For purposes of this regulation, the following terms shall have the meanings herein provided. No policy subject to this regulation shall contain definitions or terms which do not conform to the requirements of this section.

(1) "Policy" means *a policy as defined in KRS 304.14-500* [an individual Medicare supplement accident and sickness policy or an individual Medicare supplement hospital and medical service plan or contract].

(2) *"Certificate" means a certificate as defined in KRS 304.14-500* ["Medicare supplement coverage" is a policy which is designed primarily to supplement Medicare, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the requirements of this regulation applicable to any such policy sold to a person eligible for Medicare by reason of age].

(3) "Benefit period" shall not be defined as more restrictive than defined in the Medicare program.

(4) "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

1. Be an institution operated pursuant to law; and
2. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a pre-arranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and
3. Provide twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

(b) The definition of the term "hospital" may exclude:
1. Convalescent homes, convalescent, rest, or nursing facilities; or
2. Facilities primarily affording custodial, educational or rehabilitory care; or
3. Facilities for the aged, drug addicts, or alcoholics; or
4. Any military or veterans' hospital or soldiers' home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

(5) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall be defined in relation to its status, facilities, and available services.

(a) A definition of such home or facility shall not be more restrictive than one requiring that it:
1. Be operated pursuant to law;
2. Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;
3. Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
4. Provide continuous twenty-four (24) hour nursing service by or under the supervision of a registered graduate professional nurse; and
5. Maintain a daily medical record on each patient.

(b) The definition of such home or facility may exclude:
1. Any home, facility or part thereof used primarily for rest;
2. A home or facility for the aged or for the care of drug addicts or alcoholics; or
3. A home or facility primarily used for the care and treatment of mental diseases, or disorders, or custodial or educational care.

(6) "Accident," "accidental injury," "accidental means," shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: Injury or injuries, for which benefits are provided, means accidental bodily injury sustained by the insured person which is the direct result of the accident, independent of disease or bodily infirmity or any other cause, and occurs while the insurance is in force.

(b) Such definition may provide that injuries shall not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law, or injuries for which benefits are provided and such benefits are received if the injury occurs while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

(7) "Sickness" shall not be defined to be more restrictive than the following: Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force. The definition may be further modified to exclude sickness or disease for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar laws.

(8) "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(9) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as a registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

(10) "Medicare" shall be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act," "as then constituted and any later amendments or substitutes thereof," or words of similar import.

(11) "Mental or emotional disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

Section 2. Prohibited Policy Provisions. (1) No policy or *subscriber* contract shall contain a probationary period.

(2) No policy *or subscriber contract may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if such policy or subscriber contract* [shall] limit*s* or exclude*s* coverage by type of illness, accident, treatment or medical condition, except as follows:

(a) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(b) Mental or emotional disorders, alcoholism and drug addiction (except when purchased as an option);

(c) Illness, treatment or medical condition arising out of:
1. War or act of war (whether declared or undeclared); participation in a felony, riot or insurrection; service in the armed forces or units auxiliary thereto;
2. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;

(d) Cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part;

(e) Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column (insured must be offered this benefit as an option);

(f) Treatment provided in a government hospital;

benefits provided under Medicare or other governmental program (except Medicade), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories or other institutions, services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(g) Dental care or treatment;

(h) Eye glasses, hearing aids and examination for the prescription or fitting thereof;

(i) Rest cures, custodial care, transportation and routine physical examinations;

(j) Territorial limitations;

provided, however, *Medicare supplement* policies *and subscriber contracts* may not contain, when issued, limitations or exclusions of the type enumerated in paragraphs (a), (e), (i), or (j) above that are more restrictive than those of Medicare. Policies *and contracts* may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

(3) No Medicare supplement policy or subscriber contract may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

Section 3. Minimum Standards. No policy *or subscriber contract* shall be delivered or issued for delivery in this state which does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) Policy minimum standards:

(a) Premiums charged for Medicare supplement policies shall be presumed unreasonable in relation to the benefits provided if the anticipated credible loss ratio for the *individual policies* [policy] is less than *sixty percent (60%)* [sixty-five percent (65%)] *and less than seventy-five percent (75%) for group policies.* In determining the credibility of the anticipated loss ratio, due consideration shall be given to all relevant factors, including:

1. Statistical credibility of premiums and benefits;
2. Experience and projected trends;
3. Concentration of experience at early policy duration;
4. Expected claim fluctuations;
5. Refunds, adjustments, or dividends;
6. Renewability features;
7. All appropriate expense factors.

(b) The term "Medicare benefit period" shall mean the unit of time used in the Medicare program to measure use of services and availability of benefits under Part A, Medicare hospital insurance;

(c) The term "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims;

(d) Coverage, when issued, shall not be subject to any exclusions, limitations, or reductions (other than as permitted in this regulation and other applicable laws and regulations) which are inconsistent with the exclusions, limitations, or reductions permissible under Medicare, other than a provision that coverage is not provided for any expenses to the extent of any benefit available to the insured person under Medicare;

(e) Coverage shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents; and

(f) Coverage shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and co-payment percentage factors. Premiums may be changed to correspond with such changes.

(g) All policy language and solicitation materials shall be printed on a flesch scale of not less than fifty (50).

(2) Minimum benefit standards. Medicare supplement coverages shall provide at least the following benefits:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first (61st) day through the ninetieth (90th) day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(c) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage of twenty percent (20%) of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses and to a maximum benefit of at least $5,000 per calendar year.

(e) A Medicare supplement policy may not deny a claim for losses incurred more than six (6) months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(f) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health; and

(g) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or the payment of the maximum benefits.

Section 4. Required Disclosure Provisions. (1) General rules:

(a) Each policy *or subscriber certificate* shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision must be consistent with the type of contract to be issued. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, or renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) A policy *or subscriber certificate* which provides for

the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(c) If a policy *or subscriber certificate* contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(d) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a Medicare supplement policy, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy or contract shall require signed acceptance by the insured. After the date of policy or contract issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefit(s) or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(e) Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within ten (10) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(f) [(d)] Insurers issuing *accident and sickness policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis other than incidentally, to a person(s) eligible for Medicare by reason of age* [Medicare supplement coverage] shall provide to *all applicants* [the policyholder] a Medicare supplement buyers's guide entitled "Guide to Health Insurance for People with Medicare" developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration of the U.S. Department of Health and Human Services, Code No. HCFA-02110, December 1979, or as thereafter amended, available from the Health Care Financing Administration of the U.S. Department of Health and Human Services, Washington, D. C., 20202. Delivery of the buyer's guide shall be made *whether or not such policies, certificates or subscriber contracts are advertised, solicited or issued as Medicare supplement policy(ies) as defined in this regulation. Except in the case of direct response insurers, delivery of the "buyers guide" shall be made to the applicant at the time of application and acknowledgement of receipt of the "buyers guide" shall be obtained by the insurer. Direct response insurers shall deliver the "buyers guide" to the applicant upon request but not* [no] later than at the time the policy is delivered.

(g) Except as otherwise provided in Section 4(2)(c) of this regulation, the terms "Medicare supplement," "medigap," and words of similar import shall not be used unless the policy or certificate is issued in compliance with this regulation.

(2) Coverage requirements:

(a) No policy subject to this regulation shall be delivered or issued for delivery in this state unless the outline of coverage is delivered to the applicant at the time application is made and, except for the direct response policy, acknowledgment of receipt or certification of delivery of such outline of coverage is provided to the insurer; and

(b) If an outline of coverage was delivered at the time of application and the policy or contract is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or contract must accompany the policy or contract when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name: "Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(c) Any accident and sickness insurance policy or subscriber certificate, other than a Medicare supplement policy or policies, identified in Section 1 of this regulation, issued for delivery in this state to persons eligible for Medicare by reason of age, shall notify insureds under the policy or subscriber contract is not a Medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to the insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate or subscriber contract delivered to the insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language: This (policy, certificate or subscriber contract) is not a Medicare supplement (policy or certificate). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide.

(3) Outline of coverage. An outline of coverage, in the form prescribed below, shall be issued in connection with policies that meet the standards of Section 3. The items included in the outline of coverage must appear in the sequence prescribed:

(Company Name)
Medicare Supplement Coverage
Outline of Coverage

(a) Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you read your policy carefully!

(b) Medicare supplement coverage. Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and co-payment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine (delete if such coverage is provided).

(c) Neither (insert company's name) nor its agents are connected with Medicare.

(d) A brief summary of the major benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts, provided by the Medicare supplement coverage is as follows:

Service	Benefit	Medicare Pays	This Policy Pays	You Pay
Hospitalization: Semi-private room and board, general nursing and miscellaneous hospital services and supplies. Includes meals, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services.	First 60 days	All but $([160])		
	61st to 90th day	All but $([40]) a day		
	91st to 150th day	All but $([80]) a day		
	Beyond 150 days	Nothing		
Posthospital Skilled Nursing Care: In a facility approved by Medicare, you must have been in a hospital for at least three (3) days and enter the facility within fourteen (14) days after hospital discharge.	First 20 days	100% of costs		
	Additional 80 days	All but $([20]) a day		
	Beyond 100 days	Nothing		
Medical Expense	Physician's services, inpatient and out-patient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge (after $([60]) deductible)		

(e) Statement that the policy does or does not cover the following:

1. Private duty nursing.
2. Skilled nursing home care costs (beyond what is covered by Medicare).
3. Custodial nursing home care costs.
4. Intermediate nursing home care costs.
5. Home health care (above number of visits covered by Medicare).
6. Physician charges (above Medicare's reasonable charge).
7. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).
8. Care received outside of U.S.A.
9. Dental care *or* [of] dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for and the cost of eyeglasses or hearing aids.

(f) A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payment of the benefits described in paragraph (d) of this subsection, including conspicuous statements:

1. That the chart summarizing Medicare benefits only briefly describes such benefits.
2. That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.

(g) A description of policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premium.

(h) The amount of premium for this policy.

Section 5. Replacement Involving Medicare Supplement Policy. *(1) When a Medicare Supplement policy is to replace another Medicare Supplement policy, there shall be presented to the applicant, not later than at the time of taking the application, a comparison statement which shall appear as shown in Appendix A to this regulation.* [The policy issued by the replacing insurer will not be contestable by it in the event of the insured presenting a claim to any greater extent than the existing health insurance policy would have been contestable by the existing insurer had such replacement not taken place.]

(2) Insurers shall alter the amounts shown under the headings "Benefit," "Medicare Pays," and "You Pay" to agree with any changes in Medicare.

Section 6. Requirements for Replacement Involving Medicare Supplement Policy. (1) Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance policy(s) presently in force. A supplemental application or other form to be signed by the applicant containing such a question may be used.

(2) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in subsection (3) of this section. One (1) copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant upon issuance of the policy, the notice described in subsection (4) of this section. In no event, however, will such a notice be required in the solicitation of the following types of policies: accident only and single premium nonrenewable policies.

(3) The notice required by subsection (2) of this section for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

Notice to Applicant Regarding Replacement of Accident and Sickness Insurance

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company Name) Insurance Company. You may return your new policy within ten (10) days and have your entire premium refunded. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(a) Health conditions which you may presently have may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) The new policy will be issued at a higher age than your present policy; therefore, the cost of the new policy, depending upon the benefits, may be higher than your present policy.

(c) The renewal provisions of the new policy should be examined to determine whether you have the right to periodically renew.

(d) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(e) If you still wish to terminate your present policy and replace it with new coverage, be certain to accurately and completely answer all questions on the application concerning your medical/health history. Failure to include all im-

portant medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

_____
(Agent's Signature)

A copy is to be given to the applicant and a copy retained by the agent and/or company.

(4) The notice required by subsection (2) of this section for a direct response insurer shall be as follows:

Notice to Applicant Regarding Replacement of Accident and Sickness Insurance

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (Company Name) Insurance Company. You may return your new policy within *thirty (30)* [ten (10)] days and have your entire premium refunded. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(a) Health conditions which you may presently have may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) The new policy will be issued at a higher age than your present policy; therefore, the cost of the new policy, depending upon the benefits, may be higher than your present policy.

(c) The renewal provisions of the new policy should be examined to determine whether you have the right to periodically renew.

(d) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(e) (To be included only if the application is attached to the policy.) If you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (company name and address) within ten (10) days if any information is not correct and complete, or if any past medical history has been left out of the application.

_____
(Company Name)

Section 7. Duplicate Benefits. (1) No insurer or agent thereof may sell a policy to an individual entitled to benefits under federal medicare, or under any other policy with knowledge that such policy substantially duplicates health benefits to which such individual is otherwise entitled other than as a recipient of medical assistance benefits under Title XIX of the Social Security Act. For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered duplicative.

(2) Application forms shall include a question designed to elicit information as to whether the insurance to be issued duplicates other accident and health insurance presently in force.

Section 8. Effective Date. *(1) Section 5 of this regulation shall be effective thirty (30) days from the date it is approved pursuant to KRS Chapter 13.* [This regulation shall be effective thirty (30) days from the date it is approved pursuant to KRS Chapter 13.]

(2) Sections 1, 2, 3, 4, 6, 7, and 8 of this regulation shall be effective upon approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: May 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 14, 1982 at 4 p.m.

(See Appendix A to 806 KAR 17:060 on following page.)

(COMPANY NAME)

MEDICARE—HOSPITAL INSURANCE BENEFITS (PART A)

SERVICE	FOR COVERED SERVICES—EACH BENEFIT PERIOD BENEFIT	MEDICARE PAYS	YOU PAY**
HOSPITALIZATION . . . Semiprivate room and board, general nursing and miscellaneous hospital services and supplies. Includes meals, special care units, drugs, lab tests, diagnostic X-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services.	First 60 days	All but $260	$260
	61st to 90th day	All but $65 a day	$65 a day
	91st to 150th day*	All but $130 a day	$130 a day
	Beyond 150 days	Nothing	All costs
	A Benefit Period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital or skilled nursing facility for 60 days in a row.		
POSTHOSPITAL SKILLED NURSING FACILITY CARE . . . In a facility approved by Medicare. You must have been in a hospital for at least 3 days and enter the facility within 30 days after hospital discharge.	First 20 days	100% of approved amount	Nothing
	Additional 80 days	All but $32.50	$32.50
	Beyond 100 days	Nothing	All costs
	MEDICARE AND PRIVATE INSURANCE WILL NOT PAY FOR MOST NURSING HOME CARE. YOU PAY FOR CUSTODIAL CARE AND MOST CARE IN A NURSING HOME.		
HOME HEALTH CARE	Unlimited as medically necessary	Full cost	Nothing
BLOOD	Blood	All but first 3 pints	For first 3 pints

* 60 Reserve Days may be used only once; days used are not renewable.
** These figures are for 19 and are subject to change each year.

MEDICARE—MEDICAL INSURANCE BENEFITS (PART B)

SERVICE	FOR COVERED SERVICES—EACH CALENDAR YEAR BENEFIT	MEDICARE PAYS	YOU PAY
MEDICAL EXPENSE Physician's services, inpatient and outpatient medical services and supplies, physical and speech therapy, ambulance, etc.	Medicare pays for medical services in or out of the hospital. Some insurance policies pay less (or nothing) for hospital outpatient medical services or services in a doctor's office.	80% of approved amount (after $75 deductible)	$75 deductible* plus 20% of balance of approved amount (plus any charge above approved amount)**
HOME HEALTH CARE	Unlimited as medically necessary	Full cost	Nothing
OUTPATIENT HOSPITAL TREATMENT	Unlimited as medically necessary	80% of approved amount (after $75 deductible)	Subject to deductible plus 20% of balance of approved amount
BLOOD	Blood	80% of approved amount (after first 3 pints)	For first 3 pints plus 20% of balance of approved amount

*Once you have had $75 of expense for covered services in a calendar year, the Part B deductible does not apply to any further covered services you receive in that year.

**YOU PAY FOR charges higher than the amount approved by Medicare unless the doctor or supplier agrees to accept Medicare's approved amount as the total charge for services rendered.

PRIVATE INSURANCE CHECKLIST

CURRENT INSURANCE (Premium $ /yr) WILL PAY	PROPOSED INSURANCE (Premium $ /yr) WILL PAY

Proposed Amendments

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:010. Definitions and abbreviations.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined herein or in subsequent regulations, shall have the meaning given them in KRS 224.005 or by commonly accepted usage. As used in the regulations of the Division of Air Pollution unless the content clearly indicates otherwise, the following words shall have the following meaning:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit any air contaminant into the outdoor atmosphere.

(2) "Air contaminant or air pollutant" includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acid, fumes, gases, odor, vapor, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property.

(4) "Air pollution control equipment" means any mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(5) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) Any physical change in, or change in the method of operation of any affected facility which increases the potential to emit of any pollutant (to which a standard applies) emitted by such facility or which results in the emission of any air pollutant (to which a standard applies) not previously emitted.

(6) "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the department's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(7) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(8) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive and/or control measures.

(9) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(10) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any limitation or standard.

(11) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(12) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

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

(14) "Director" means Director of the Division of Air Pollution of the Department for Natural Resources and Environmental Protection.

(15) "District" means an air pollution control district as provided for in KRS Chapter 77.

(16) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from any affected facility or from air pollution control equipment installed in any affected facility.

(17) "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the department's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(18) "Existing source" means any source which is not a new source.

(19) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(20) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat.

(21) "Fugitive emissions," except where 401 KAR 51:017 and 401 KAR 51:052 are applicable, means the emissions of particulate matter into the open air other than from a stack or air pollution control equipment exhaust.

(22) [(21)] "Hydrocarbon" means any organic compound consisting predominantly of carbon and hydrogen.

(23) [(22)] "Incineration" means the process of igniting and burning solid, semi-solid, liquid, or gaseous combustible wastes.

(24) "Intermittent visible emissions" means emissions of particulate matter into the open air from a stack which, as a result of the intermittent nature of the associated process, are visible for less than any six (6) consecutive minutes.

(25) [(23)] "Malfunction" means any failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(26) [(24)] "Major source" means any source of which the potential emission rate is equal to or greater than 100 tons per year of any of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(27) [(25)] "Modification" means any physical change in, or change in the method of operation of an affected facility which increases the potential to emit of any air pollutant (to which a standard applies) emitted by such facility, or which results in the emission of any air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the department;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to such facility, the affected facility is designed to accommodate such alternative use.

(28) [(26)] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(29) [(27)] "New source" means any source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of any change in emission rate.

(30) [(28)] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the department.

(31) [(29)] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(32) [(30)] "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(33) [(31)] "Particulate matter" means any material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(34) [(32)] "Person or persons" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity whatsoever.

(35) [(33)] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(36) [(34)] "Reconstruction" means the replacement of components of an existing affected facility to such an extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The department's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(37) [(35)] "Reference method" means any method of sampling and analyzing for an air pollutant as prescribed by Appendices A through G to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation or chapter.

(38) [(36)] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(39) [(37)] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to [:]

[(a) Emissions from ships or trains coming to or from the new or modified stationary source; and]

[(b)] emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. *Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a marine vessel.*

(40) [(38)] "Shutdown" means the cessation of an operation for any purpose.

(41) [(39)] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(42) [(40)] "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(43) [(41)] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division of Air Pollution or the emission control requirements necessary to comply with the provisions of Title 401, Chapter 51, of the regulations of the Division of Air Pollution.

(44) [(42)] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means

twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(45) [(43)] "Startup" means the setting in operation of an affected facility for any purpose.

(46) [(44)] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(47) [(45)] "Urban county" means any county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1970 census. If any portion of a county is a part of such an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division of Air Pollution.

(48) [(46)] "Urbanized area" means any area defined as such by the U.S. Department of Commerce, Bureau of Census.

(49) "Volatile organic compounds (VOC)" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC—Association of Official Analytical Chemists
ANSI—American National Standards Institute
ASTM—American Society for Testing and Materials
BOD—Biochemical oxidant demand
BTU—British Thermal Unit
°C—Degree Celsius (centigrade)
Cal—calorie
cfm—Cubic feet per minute
CFR—Code of Federal Regulations
CH_4—methane
CO—Carbon monoxide
CO_2—Carbon dioxide
COD—Chemical oxidant demand
dscf—dry cubic feet at standard conditions
dscm—dry cubic meter at standard conditions
°F—Degree Fahrenheit
ft—feet
g—gram(s)
gal—gallon(s)
gr—grain(s)
hr—hour(s)
HCl—Hydrochloric acid
Hg—mercury
HF—Hydrogen fluoride
H_2O—water
H_2S—Hydrogen sulfide
H_2SO_4—Sulfuric acid
in—inch(es)
J—joule
KAR—Kentucky Administrative Regulations
kg—kilogram(s)
KRS—Kentucky Revised Statutes
l—liter(s)
lb—pound(s)
m—meter(s)
min—minute(s)
mg—milligram(s)
MJ—megajoules
MM—million
mm—millimeter(s)
mo—month
Ng—nanograms
N_2—Nitrogen
NO—Nitric oxide
NO_2—Nitrogen dioxide
NO_x—Nitrogen oxides
oz—ounce
O_2—oxygen
O_3—ozone
ppb—parts per billion
ppm—parts per million
ppm (w/w)—parts per million (weight by weight)
ug—microgram
psia—pounds per square inch absolute
psig—pounds per square inch gage
S—at standard conditions
sec—second
TAPPI—Technical Association of the Pulp and Paper Industry
SO_2—Sulfur dioxide
sq—square
TSS—Total suspended solids
U.S. EPA—United States Environmental Protection Agency
yd—yard

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982
RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.
SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 1233.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:005. General provisions.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation is to provide for the establishment of monitoring requirements, performance testing requirements, and other general provisions as related to new sources.

Section 1. Applicability. The provisions of this chapter shall apply to the owner or operator of any new source for which a standard of performance has been promulgated under this chapter.

Section 2. Performance Tests. (1) Within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the department, the owner or

operator of any affected facility except those affected facilities specified below shall conduct performance test(s) according to 401 KAR 50:045 and furnish the department a written report of the results of such performance test(s).

(a) Process operation with a process weight rate of less than 100 tons per hour;

(b) Indirect heat exchanger of 250 million BTU heat input per hour or less;

(c) Incinerator with a charging rate of forty-five (45) metric tons per day (fifty (50) tons/day) or less;

(d) Affected facilities specified in 401 KAR 59:046, 401 KAR 59:048, 401 KAR 59:050, 401 KAR 59:090, 401 KAR 59:095, 401 KAR 59:101, 401 KAR 59:175, 401 KAR 59:180, 401 KAR 59:185, 401 KAR 59:190, 401 KAR 59:195, 401 KAR 59:200, 401 KAR 59:210, 401 KAR 59:212, 401 KAR 59:214, 401 KAR 59:215, 401 KAR 59:220, 401 KAR 59:225, 401 KAR 59:230, 401 KAR 59:235, and 401 KAR 59:240.

(2) The department may require the owner or operator of any affected facility [including those] specified in subsection (1)*(a) to (d)* of this section to conduct performance test(s) according to 401 KAR 50:045 and furnish a written report of the results of such performance test(s).

Section 3. Notification and Recordkeeping. Nothing in this section shall relieve the owner or operator from the responsibility of obtaining the appropriate permits required by 401 KAR 50:035.

(1) Any owner or operator subject to the provisions of this regulation shall furnish the department written notification as follows:

(a) A notification of the date of construction, reconstruction, or modification of an affected facility is commenced, postmarked no later than thirty (30) days after such date;

(b) A notification of the anticipated date of initial startup of an affected facility postmarked not more than sixty (60) days nor less than thirty (30) days prior to such date;

(c) A notification of the actual date of initial startup of an affected facility postmarked within fifteen (15) days after such date;

(d) A notification of any physical or operational change to an affected facility which may increase the emission rate of any air pollutant to which a standard applies. This notice shall be postmarked sixty (60) days or as soon as practicable before the change is commenced and shall include information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change. The department may request additional relevant information subsequent to this notice;

(e) A notification of the date upon which demonstration of the continuous monitoring system performance commences in accordance with Section 4(3). Notifications shall be postmarked not less than thirty (30) days prior to such date.

(2) Any owner or operator subject to the provisions of this chapter shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

(3) Each owner or operator required to install a continuous monitoring system shall submit for every calendar quarter a written report of excess emissions (as defined in applicable sections) to the department. Both a printed report and computer tape or cards shall be furnished in the format specified by the department. All quarterly reports shall be postmarked by the thirtieth (30th) day following the end of each calendar quarter and shall include the following information:

(a) The magnitude of excess emissions computed in accordance with Section 4(8), any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions;

(b) All hourly averages shall be reported for sulfur dioxide and nitrogen oxides monitors. The hourly averages shall be made available on computer tape or cards;

(c) Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted;

(d) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments;

(e) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(4) Any owner or operator subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurement; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two (2) years following the date of such measurements, maintenance, reports, and records.

Section 4. Monitoring Requirements. (1) All continuous monitoring systems required under the regulations of this chapter shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring system under Appendix B of 40 CFR 60, filed by reference in 401 KAR 50:015, unless:

(a) The continuous monitoring system is subject to the provisions of subsection (3)(b) and (c) of this section; or

(b) Otherwise specified in an applicable regulation or by the department.

(2) All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under Section 2. Verification of operational status shall, as a minimum, consist of the following:

(a) For continuous monitoring systems referenced in subsection (3)(a) of this section, completion of the conditioning period specified by applicable requirements in Appendix B to 40 CFR 60;

(b) For continuous monitoring systems referenced in subsection (3)(b) of this section, completion of seven (7) days of operation;

(c) For monitoring devices referenced in applicable regulations, completion of the manufacturer's written requirements or recommendations for checking the operation or calibration of the device.

(3) During any performance tests required under Section 2 or within thirty (30) days thereafter and at such other times as may be required by the department, the owner or operator of any affected facility shall conduct continuous

monitoring system performance evaluations and furnish the department within sixty (60) days thereof a copy of a written report of the results of such tests. These continuous monitoring system performance evaluations shall be conducted in accordance with the following specifications and procedures:

(a) Continuous monitoring systems listed within this paragraph except as provided in paragraph (b) of this subsection shall be evaluated in accordance with the requirements and procedures contained in the applicable performance specification of Appendix B to 40 CFR 60 as follows:

1. Continuous monitoring systems for measuring opacity of emissions shall comply with Performance Specification 1;

2. Continuous monitoring systems for measuring nitrogen oxides emissions shall comply with Performance Specification 2;

3. Continuous monitoring systems for measuring sulfur dioxide emissions shall comply with Performance Specification 2;

4. Continuous monitoring systems for measuring the oxygen content or carbon dioxide content of effluent gases shall comply with Performance Specification 3.

(b) An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components or who, prior to October 6, 1975, installed continuous monitoring equipment, shall comply with the following requirements:

1. Continuous monitoring systems for measuring opacity of emissions shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test and associated calculation procedures set forth in Performance Specification 1 of Appendix B to 40 CFR 60 shall be used for demonstrating compliance with this specification;

2. Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calculation procedures set forth in Appendix B to 40 CFR 60 shall be used for demonstrating compliance with this specification;

3. Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1975, may be required to conduct tests under subparagraphs 1. and/or 2. of this paragraph if so requested by the department.

(c) All continuous monitoring systems referenced by paragraph (b) of this subsection shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and the new or improved systems shall be demonstrated to comply with applicable performance specifications under paragraph (a) of this subsection on or before September 11, 1979.

(4) Owners or operators of all continuous monitoring systems installed in accordance with the provisions of this regulation shall check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer of such systems unless the manufacturer recommends adjustments at shorter intervals, in which case such recommendations shall be followed. The zero and span shall, as a minimum, be adjusted whenever the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift limits of the applicable performance specifications in Appendix B to 40 CFR 60 are exceeded. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero or span drift adjustments except that, for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds four (4) percent opacity. Unless otherwise approved by the department, the following procedures, as applicable, shall be followed:

(a) For extractive continuous monitoring systems measuring gases, minimum procedures shall include introducing applicable zero and span gas mixtures into the measurement system as near the probe as is practical. Span and zero gases certified by their manufacturer to be traceable to National Bureau of Standards reference gases shall be used whenever these reference gases are available. The span and zero gas mixtures shall be the same composition as specified in Appendix B to 40 CFR 60. Every six (6) months from date of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses with Reference Method 6 for sulfur dioxide, Reference Method 7 for nitrogen oxides, and Reference Method 3 for oxygen and carbon dioxide;

(b) For non-extractive continuous monitoring systems measuring gases, minimum procedures shall include upscale check(s) using a certified calibration gas cell or test cell which is functionally equivalent to a known gas concentration. The zero check may be performed by computing the zero value from upscale measurements or by mechanically producing a zero condition;

(c) For continuous monitoring systems measuring opacity of emissions, minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

(5) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under subsection (4) of this section, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(a) All continuous monitoring systems referenced by subsection (3)(a) and (b) of this section for measuring opacity of emissions shall complete a minimum of one (1) cycle of sampling and analyzing for each successive ten (10) second period and one (1) cycle of data recording for each successive six (6) minute period;

(b) All continuous monitoring systems referenced by subsection (3)(a) of this section for measuring oxides of nitrogen, sulfur dioxide, carbon dioxide, or oxygen shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive fifteen (15) minute period;

(c) All continuous monitoring systems referenced by subsection (3)(b) of this section, except opacity, shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive one (1) hour period.

(6) All continuous monitoring systems or monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous monitoring systems contained in the applicable Performance Specifications of Appendix B to 40 CFR 60 shall be used.

(7) When the effluents from a single affected facility or

two (2) or more affected facilities subject to the same emission standard are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emission standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one (1) affected facility is released to the atmosphere through more than one (1) point, the owner or operator shall install applicable continuous monitoring systems on each separate effluent unless the installation of fewer systems is approved by the department.

(8) Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to six (6) minute averages and for systems other than opacity to one (1) hour averages. Six (6) minute opacity averages shall be calculated from twenty-four (24) or more data points equally spaced over each six (6) minute period. For systems other than opacity, one (1) hour averages shall be computed from four (4) or more data points equally spaced over each one (1) hour period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this subsection. An arithmetic or integrated average of all data may be used. The data output of all continuous monitoring systems may be recorded in reduced or nonreduced form (e.g. ppm pollutant and percent oxygen or lb/million BTU of pollutant). All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in regulations within this chapter. After conversion into units of the standard the data may be rounded to the same number of significant digits used in the regulation to specify the applicable standard (e.g. rounded to the nearest one (1) percent opacity).

(9) Upon written application by an owner or operator, the department may allow alternative monitoring procedures or requirements which have been approved by the U. S. EPA including, but not limited to the following:

(a) Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this chapter would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases;

(b) Alternative monitoring requirements when the affected facility is infrequently operated;

(c) Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct stack moisture conditions;

(d) Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

(e) Alternative methods of converting pollutant concentration measurements to units of the standards;

(f) Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells;

(g) Alternatives to the ASTM test methods, filed by reference in 401 KAR 50:015, or sampling procedures specified by any regulation;

(h) Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1, Appendix B to 40 CFR 60, but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The department may require that such demonstration be performed for each affected facility;

(i) Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two (2) or more affected facilities are released to the atmosphere through more than one (1) point.

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982

RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 1233.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:010. New process operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new process operations which are not subject to another particulate standard within this chapter.

Section 1. Applicability. *(1)* The provisions of this regulation shall apply to each affected facility, associated with a process operation, which is not subject to another emission standard with respect to particulates in this chapter, commenced on or after the classification date defined below.

(2) Emissions of particulate matter which do not exit through a control device or stack are subject to the provisions of 401 KAR 63:010.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, and shall include any storage or handling of materials or products, before, during, or after manufacturing or processing.

(2) "Process weight" means the total weight of all materials introduced into any affected facility which may cause any emission of particulate matter, but does not include liquid and gaseous fuels charged, combustion air, or uncombined water.

(3) "Process weight rate" means a rate established as follows:

(a) For continuous or long-run steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(b) For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

(c) Where the nature of any process operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation which results in the minimum value for allowable emission shall apply.

(4) "Affected facility" as related to process operations means the last operation preceding the emission of air contaminants which results:

(a) In the separation of the air contaminant from the process materials; or

(b) In the conversion of the process materials into air contaminants, but does not include an air pollution abatement operation.

(5) "Classification date" means July 2, 1975.

Section 3. Standard for Particulate Matter. *(1) Opacity standard.*

(a) No person shall cause, suffer, allow, or permit *any continuous visible* [the] emission into the open air *from a control device or stack associated with* [of particulate matter from] any affected facility [, or from all air pollution control equipment installed on any affected facility] which [:]

[(1)] is equal to or greater than twenty (20) percent opacity. [; or]

(b) No person shall cause, suffer, allow or permit any intermittent visible emission into the open air from a control device or stack associated with any affected facility which is equal to or greater than twenty (20) percent opacity for twelve (12) or more times in any consecutive sixty (60) minute sampling period or is at any time greater than sixty (60) percent opacity.

(2) *Mass emission standard. No person shall cause, suffer, allow or permit the emission into the open air of particulate matter which exits from a control device or stack associated with any affected facility which* is in excess of the quantity specified in Appendix A to this regulation.

Section 4. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Section 3 shall be conducted according to the following methods. *Kentucky Method 50 and reference methods are* [,] filed by reference in 401 KAR 50:015. [:]

(1) For sources located in or having significant impact upon areas designated non-attainment for total suspended particulates under 401 KAR 51:010, Kentucky Method 50 for the emission rates of particulate matter and the associated moisture content. In all other areas Reference Method 5 shall be used.

(2) Reference Method 1 for sample and velocity traverses.

(3) Reference Method 2 for velocity and volumetric flow rate.

(4) Reference Method 3 for gas analysis.

(5) Reference Method 9 for *continuous* visible emissions.

(6) For intermittent visible emissions, the method to determine opacity shall be Reference Method 9 except that the readings which are taken at fifteen (15) second intervals shall not be averaged over six (6) minutes. The standard in Section 3(1)(b) shall be exceeded if any twelve (12) or more readings in a period of sixty (60) consecutive minutes are equal to or greater than twenty (20) percent opacity or if any single reading is above sixty (60) percent opacity.

(7) [(6)] For Kentucky Method 50 or Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sample volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling time or volumes, when necessitated by process variables or other factors, may be approved by the department.

APPENDIX A TO 401 KAR 59:010
ALLOWABLE RATE OF PARTICULATE EMISSION BASED ON PROCESS WEIGHT RATE

Process Weight Rate		Maximum Allowable Emission Rate
Lb/Hr.	Ton/Hr.	Lb/Hr.
[100 or less	0.05 or less	0.56]
[200	0.10	0.86]
[400	0.20	1.32]
[600	0.30	1.70]
[800	0.40	2.03]
1,000 *or less*	0.50 *or less*	2.34
1,500	0.75	3.00
2,000	1.00	3.59
2,500	1.25	4.12
3,000	1.50	4.62
3,500	1.75	5.08
4,000	2.00	5.52
5,000	2.50	6.34
6,000	3.00	7.09
7,000	3.50	7.81
8,000	4.00	8.48
9,000	4.50	9.12
10,000	5.00	9.74
12,000	6.00	10.90
16,000	8.00	13.03
18,000	9.00	14.02
20,000	10.00	14.97
30,000	15.00	19.24
40,000	20.00	23.00
50,000	25.00	26.41
60,000	30.00	29.57
70,000	35.00	30.57
80,000	40.00	31.23
90,000	45.00	31.83
100,000	50.00	32.37
120,000	60.00	33.33
140,000	70.00	34.16
160,000	80.00	34.90
200,000	100.00	36.17
1,000,000	500.00	46.79
2,000,000	1,000.00	52.28
6,000,000	3,000.00	62.32

Interpolation of the data for process weight rates up to 60,000 lb/hr. shall be accomplished by use of the equation

$$E = 3.59P^{0.62}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr. shall be accomplished by the use of the equation

$$E = 17.31P^{0.16}$$

where E = rate of emission in lb/hr and P = process weight rate in tons/hr.

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982

RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 1233.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:005. General provisions.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation is to provide for the establishment of monitoring requirements, performance testing requirements, and other general provisions as related to existing sources.

Section 1. Applicability. The provisions of this chapter shall apply to the owner or operator of any existing source for which a standard of performance has been promulgated under this chapter.

Section 2. Performance Test. (1) On or before the completion of a control plan at an affected facility and at such other times as may be required by the department, the owner or operator of an affected facility, except for those affected facilities specified below, shall conduct performance test(s) according to 401 KAR 50:045 and shall furnish the department a written report of the results of such performance test(s).

(a) Process operation with a process weight rate of less than 100 tons per hour;

(b) Indirect heat exchangers of less than 250 million BTU heat input;

(c) Incinerator with a charging rate of forty-five (45) metric tons per day (fifty (50) tons/day) or less;

(d) Affected facilities specified in 401 KAR 61:040, 401 KAR 61:045, 401 KAR 61:050, 401 KAR 61:056, 401 KAR 61:060, 401 KAR 61:085, 401 KAR 61:090, 401 KAR 61:095, 401 KAR 61:100, 401 KAR 61:105, 401 KAR 61:110, 401 KAR 61:120, 401 KAR 61:122, 401 KAR 61:124, 401 KAR 61:125, 401 KAR 61:130, 401 KAR 61:132, 401 KAR 61:135, 401 KAR 61:137, 401 KAR 61:150, 401 KAR 61:155, and 401 KAR 61:160.

(2) The department may require the owner or operator of any affected facility [including those] specified in subsection (1)*(a) to (d)* of this section to conduct performance test(s) according to 401 KAR 50:045 and furnish a written report of the results of such performance test(s).

Section 3. Emission Monitoring. This section sets forth the minimum requirements for continuous emission monitoring, recording, and reporting for source categories which are set forth. It includes the performance specifications for accuracy, reliability, and durability of acceptable monitoring systems and techniques to convert emission data to units of applicable emission standards.

(1) The owner or operator of a source in a category listed below shall:

(a) Install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants specified in this section for the applicable source category;

(b) Complete the installation and performance tests of such equipment and begin monitoring and recording within eighteen (18) months from June 29, 1979, except as provided in paragraph (c) of this subsection; and

(c) For continuous emission monitoring systems for which there are no performance specifications under Appendix B of 40 CFR 60, filed by reference in 401 KAR 50:015, as of June 29, 1979, complete the installation and performance tests of such equipment and begin monitoring and recording within eighteen (18) months of promulgation of the applicable performance specifications under Appendix B of 40 CFR 60.

(2) The source categories and the respective monitoring requirements are listed below.

(a) Indirect heat exchangers, as specified in subsection (6)(a) of this section shall be monitored for opacity, sulfur dioxide emissions, and oxygen or carbon dioxide.

(b) Sulfuric acid plants, as specified in subsection (6)(b) of this section shall be monitored for sulfur dioxide emissions.

(c) Nitric acid plants as specified in subsection (6)(c) of this section shall be monitored for nitrogen oxides emissions.

(d) Petroleum refinery affected facilities as specified in subsection (6)(d) of this section shall be monitored as specified in subsection (6)(d) of this section.

(e) Incinerators, as specified in subsection (6)(e) of this section, shall be monitored for opacity.

(f) Control devices, as specified in subsection (6)(f) of this section, shall be monitored for opacity.

(3) Exemption. Sources which are scheduled for retirement within five (5) years after June 29, 1979 are exempt from the requirements of this section, provided that adequate evidence and guarantees are provided that clearly show that the source will cease operating on or before that date.

(4) Extensions. Reasonable extensions of the time provided for installation of monitors may be allowed for sources unable to meet the time-frame prescribed in subsection (1)(b) of this section, provided the owner or operator of such facility demonstrates that good faith efforts have been made to obtain and install such devices within such prescribed time-frame.

(5) Monitoring systems malfunctions. The department may provide a temporary exemption from the monitoring and reporting requirements of this section during any period of monitoring system malfunction, provided that the source owner or operator shows, to the department's satisfaction, that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Monitoring requirements:

(a) Indirect heat exchangers. Each indirect heat exchanger, except as provided in the following subparagraphs, with an annual average capacity factor of greater than thirty (30) percent as demonstrated to the department by the owner or operator, shall conform with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question. (Annual average capacity factor means the ratio of the actual annual heat input to the potential annual heat input based on rated capacity.)

1. A continuous monitoring system for the measurement of opacity which meets the appropriate performance specification as specified in subsection (7) of this section shall be installed, calibrated, maintained, and operated in accordance with the procedures of this subsection by the owner or operator of any such indirect heat exchanger of greater than 250 million BTU per hour heat input except where: gaseous fuel is the only fuel burned, or oil or a mixture of gas and oil are the only fuels burned and the source is able to comply with the applicable particulate matter and opacity standards without utilization of particulate matter

collection equipment, and where the source has never been found, through any administrative or judicial proceedings, to be in violation of any visible emission standard.

2. A continuous monitoring system for the measurement of sulfur dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section shall be installed, calibrated, maintained, and operated on any indirect heat exchangers (except where natural gas or wood waste is burned) of greater than 250 million BTU per hour heat input.

3. A continuous monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section shall be installed, calibrated, operated, and maintained on indirect heat exchangers where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard.

(b) Sulfuric acid plants. For the purposes of this regulation, "sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds. The owner or operator of each sulfuric acid plant of greater than 200 tons per day production capacity, the production capacity being expressed as 100 percent acid, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of sulfur dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section for each sulfuric acid producing facility within such plant.

(c) Nitric acid plants. For the purposes of this regulation "nitric acid plant" means any facility producing nitric acid thirty (30) to seventy (70) percent by weight in strength by either the pressure or atmospheric pressure process. The owner or operator of each nitric acid plant of greater than 200 tons per day production capacity, the production capacity being expressed as 100 percent acid, shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of nitrogen oxides which meet the appropriate performance specifications as specified in subsection (7) of this section for each nitric acid producing facility within such plant.

(d) Petroleum refineries. The owner or operator of each affected facility specified in this paragraph shall install, calibrate, maintain and operate continuous monitoring equipment as follows:

1. A continuous monitoring system for the measurement of opacity for catalyst regenerator for fluid bed cracking units of greater than 20,000 barrels per day fresh feed capacity which meets the appropriate performance specifications specified in subsection (7) of this section.

2. A continuous monitoring system for the measurement of sulfur dioxide in the gases discharged into the atmosphere from the combustion of fuel gases subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section (except where a continuous monitoring system for the measurement of hydrogen sulfide is installed under subparagraph 3 of this paragraph). The pollutant gas used to prepare calibration gas mixtures under Performance Specification 2 of 40 CFR 60 paragraph 2.1 and for calibration checks shall be sulfur dioxide. The span shall be set at 100 ppm. For conducting monitoring system performance evaluations, Reference Method 6 shall be used.

3. An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section, if compliance is achieved by removing hydrogen sulfide from the fuel gas before it is burned; fuel gas combustion devices having a common source of fuel gas may be monitored at one (1) location, if monitoring at this location accurately represents the concentration of hydrogen sulfide in the fuel gas burned. The span of this continuous monitoring system shall be 300 ppm.

4. An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:145 which meets the appropriate performance specifications in subsection (7) of this section, if compliance is achieved through the use of an oxidation control system or a reduction control system followed by incineration. The span of this continuous monitoring system shall be set at 500 ppm.

5. An instrument(s) for continuously monitoring and recording the concentration of hydrogen sulfide and reduced sulfur compounds in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section, if compliance is achieved through the use of a reduction control system not followed by incineration. The span(s) of this continuous monitoring system shall be set at twenty (20) ppm for monitoring and recording the concentration of hydrogen sulfide and 600 ppm for monitoring and recording the concentration of reduced sulfur compounds.

6. An instrument for continuously monitoring and recording the concentration of sulfur dioxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section. The span of this continuous monitoring system shall be 1,500 ppm.

(e) Incinerators. Each incinerator with a charging capacity of more than forty-five (45) metric tons per day (fifty (50) tons/day) shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section.

(f) Each control device with a concentrated discharge associated with the affected facilities subject to 401 KAR 61:070, 401 KAR 61:075, or 401 KAR 61:080 shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section.

(7) Except as provided in subsection (8) of this section, all owners or operators which are required to comply with this section shall demonstrate compliance with the following performance specifications of Appendix B to 40 CFR 60.

(a) Continuous monitoring systems for measuring opacity shall comply with Performance Specification 1.

(b) Continuous monitoring systems for measuring sulfur dioxide shall comply with Performance Specification 2.

(c) Continuous monitoring systems for measuring nitrogen oxides shall comply with Performance Specification 2.

(d) Continuous monitoring systems for measuring oxygen shall comply with Performance Specification 3.

(e) Continuous monitoring systems for measuring car-

bon dioxide shall comply with Performance Specification 3.

(8) An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components or who installed continuous monitoring equipment prior to October 6, 1975 shall comply with the following requirements:

(a) Continuous monitoring systems for measuring opacity of emissions shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test and associated calculation procedures set forth in Performance Specification 1 of Appendix B to 40 CFR 60 shall be used for demonstrating compliance with this specification;

(b) Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calculation procedures set forth in Appendix B to 40 CFR 60 shall be used for demonstrating compliance with this specification;

(c) Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1975, may be required to conduct tests under paragraphs (a) and/or (b) of this subsection if requested by the department;

(d) All continuous monitoring systems referenced by this subsection shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and the new or improved systems shall be demonstrated to comply with applicable performance specifications within five (5) years from June 29, 1979.

(9) Calibration gases. For sulfur dioxide monitoring systems installed on indirect heat exchangers, sulfuric acid plants or petroleum refinery fluid catalyst cracking unit regenerators, the pollutant gas used to prepare calibration gas mixtures (Section 2.1, Performance Specification 2, Appendix B to 40 CFR 60) shall be sulfur dioxide. For nitrogen oxides monitoring systems, installed on nitric acid plants the pollutant gas used to prepare calibration gas mixtures (Section 2.1, Performance Specification 2, Appendix B to 40 CFR 60) shall be nitrogen dioxide. This gas shall also be used for daily checks under subsection (13) of this section as applicable. Span and zero gases certified by their manufacturer to be traceable to National Bureau of Standards reference gases shall be used whenever these reference gases are available. Every six (6) months from dates of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A to 40 CFR 60 as follows: for sulfur dioxide, use Reference Method 6, for nitrogen dioxide use Reference Method 7, and for carbon dioxide and oxygen use Reference Method 3.

(10) Cycling times. Cycling times include the total time a monitoring system requires to sample, analyze, and record an emission measurement.

(a) Continuous monitoring systems for measuring opacity shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive ten (10) second period.

(b) Continuous monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive fifteen (15) minute period.

(11) Monitor location. A continuous monitoring device shall be installed such that representative measurements of emissions or process parameters (i.e., oxygen or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous monitoring systems to obtain representative samples are contained in the applicable Performance Specifications of Appendix B of 40 CFR 60.

(12) Combined effluents. When the effluents from two (2) or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere, the department may allow monitoring systems to be installed on the combined effluent. When the affected facilities are not of similar design and operating characteristics, or when the effluent from one (1) affected facility is released to the atmosphere through more than one (1) point, the department shall establish alternate procedures to implement the intent of these requirements.

(13) Zero and span drift. Owners or operators of all continuous monitoring systems installed in accordance with the requirements of this subsection shall record the zero and span drift in accordance with the method prescribed by the manufacturer of such instruments; to subject the instruments to the manufacturer's recommended zero and span check at least once daily unless the manufacturer has recommended adjustments at shorter intervals, in which case the recommendations shall be followed; to adjust the zero and span whenever the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift limits of the applicable performance specifications in Appendix B of 40 CFR 60 are exceeded; and to adjust continuous monitoring systems referenced by subsection (8) of this section whenever the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift exceeds ten (10) percent of the emission standard.

(14) Span. Instrument span should be approximately 200 percent of the expected instrument data display output corresponding to the emission standard of the source.

(15) Alternate procedures and requirements. The department may allow equivalent procedures and requirements that have been approved by the U.S. EPA for continuous monitoring systems as follows:

(a) Alternate monitoring requirements to accommodate continuous monitoring systems that require corrections for stack moisture conditions (e.g., an instrument measuring sulfur dioxide emissions on a wet basis could be used with an instrument measuring oxygen concentration on a dry basis if acceptable methods of measuring stack moisture conditions are used to allow accurate adjustments of the measured sulfur dioxide concentration to a dry basis).

(b) Alternate locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate to the satisfaction of the department that installation at alternate locations will enable accurate and representative measurements.

(c) Alternative procedures for performing calibration checks (e.g., some instruments may demonstrate superior drift characteristics that require checking at less frequent intervals).

(d) Alternative monitoring requirements when the effluent from two (2) or more identical affected facilities is released to the atmosphere through more than one (1) point (e.g., an extractive, gaseous monitoring system used at several points may be approved if the procedures recommended are suitable for generating accurate emission averages).

(e) Alternate continuous monitoring systems that do not

meet the spectral response requirements in Performance Specification 1, Appendix B of 40 CFR 60, but adequately demonstrate a definite and consistent relationship between their measurements and the opacity measurements of a system complying with the requirements in Performance Specification 1. The department may require that such demonstration be performed for each affected facility.

(16) Minimum data requirements. The following paragraphs set forth the minimum data reporting requirements. Both a printed summary and computer tape or cards shall be furnished in the format specified by the division.

(a) Owners or operators of facilities required to install continuous monitoring systems shall submit for every calendar quarter, a written report of excess emissions and the nature and cause of the excess emissions if known. The averaging period used for data reporting should correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the pollutant/source category in question. The required report shall include, as a minimum, the data stipulated in this subsection. All quarterly reports shall be postmarked by the thirtieth (30th) day following the end of each calendar quarter.

(b) For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of six (6) minute averages of opacity greater than the opacity standard in the applicable standard for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetically averaging a minimum of four (4) equally spaced, instantaneous opacity measurements per minute. Any time period exempted shall be considered before determining the excess average of opacity (e.g., whenever a regulation allows two (2) minutes of opacity measurements in excess of the standard, the source shall report all opacity averages, in any one (1) hour, in excess of the standard, minus the two (2) minute exemption). If more than one (1) opacity standard applies, excess emissions data must be submitted in relation to all such standards. Opacity data need be reported on computer cards or tape only.

(c) For gaseous measurements the summary shall consist of hourly averages in the units of the applicable standard. The hourly averages shall not appear in the written summary, but shall be made available from the computer tape or cards.

(d) The date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of system repairs or adjustments shall be reported. Proof of continuous monitoring system performance whenever system repairs or adjustments have been made is required.

(e) When no excess emissions have occurred and the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be included in the report.

(f) Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous monitoring system or as necessary to convert monitoring data to the units of the applicable standard for a minimum of two (2) years from the date of collection of such data or submission of such summaries.

(17) Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.

(a) For indirect heat exchangers the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million BTU) where necessary:

1. When the owner or operator of an indirect heat exchanger elects under subsection (6)(a)3 of this section to measure oxygen in the flue gases, the measurements of the pollutant concentration and oxygen concentration shall each be on a dry basis and Equation I of the conversion procedures in Appendix A to this regulation shall be used.

2. When the owner or operator elects under subsection (6)(a)3 of this section to measure carbon dioxide in the flue gases, the measurement of the pollutant concentration and the carbon dioxide concentration shall each be on a consistent basis (wet or dry) and Equation II of the conversion procedures in Appendix A to this regulation shall be used.

(b) For sulfuric acid plants the owner or operator shall:

1. Establish a conversion factor three (3) times daily according to the procedures in 401 KAR 59:035, Section 5(2);

2. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in kg/metric ton (lb/short ton); and

3. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.

(c) The department may allow data reporting or reduction procedures varying from those set forth in this section if the owner or operator of a source shows to the satisfaction of the department that his procedures are at least as accurate as those in this section. Such procedures may include but are not limited to the following:

1. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).

2. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

(18) Special consideration. The department may provide for approval, on a case-by-case basis, of alternative monitoring requirements different from the provisions of this section if the provisions of this section (i.e., the installation of a continuous emission monitoring system) cannot be implemented by a source due to physical plant limitations or extreme economic reasons. In such cases, when the department exempts any source subject to this section by use of this provision from installing continuous emission monitoring systems, the department shall set forth alternative emission monitoring and reporting requirements (e.g., periodic manual stack tests) to satisfy the intent of these regulations. Examples of such special cases include, but are not limited to, the following:

(a) Alternate monitoring requirements may be prescribed when installation of a continuous monitoring system or monitoring device specified by this section would not provide accurate determinations of emissions.

(b) Alternate monitoring requirements may be prescribed when the affected facility is infrequently operated.

(c) Alternative monitoring requirements may be prescribed when the department deems that the requirements of this section would impose an extreme economic burden on the source owner or operator. The burden of proof for an alleged "economic burden" is to be borne by the source.

(d) Alternative monitoring requirements may be prescribed when the department deems that monitoring systems prescribed by this section cannot be installed due

to physical limitations at the facility.

APPENDIX A TO 401 KAR 61:005
CONVERSION PROCEDURES

Equation I.

$$E = \frac{CF\,(20.9)}{(20.9 - \%\ O_2)}$$

Equation II.

$$E = \frac{CFc(100)}{\%\ CO_2}$$

Where:

E = pollutant emission, g/million cal (lb/million BTU).

C = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by 4.16×10^{-5} M g/dscm per ppm (2.64×10^{-9} M lb/dscf per ppm) where M = pollutant molecular weight, g/g-mole (lb/lb-mole). M = 64 for sulfur dioxide and 46 for oxides of nitrogen.

$\%O_2, \%CO_2$ = oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under Section 3(6)(a)3.

F,Fc = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of the carbon dioxide generated to the calorific value of the fuel combusted (Fc) respectively. Values of F and Fc are given in 401 KAR 59:015 as applicable.

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982

RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 1233.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:015. Existing indirect heat exchangers.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing indirect heat exchangers.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the applicable classification date defined below.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010 and 401 KAR 50:025.

(1) "Affected facility" means an indirect heat exchanger having a heat input capacity of more than one (1) million BTU per hour.

(2) "Indirect heat exchanger" means any piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.

(3) "Classification date" means:

(a) August 17, 1971, for affected facilities with a capacity of more than 250 million BTU per hour heat input;

(b) April 9, 1972, for affected facilities with a capacity of 250 million BTU per hour heat input or less.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all affected facilities, commenced before the applicable classification date within a source shall be used as specified in Sections 4 and 5 to determine the allowable emission in terms of pounds of effluent per million BTU heat input.

(2) At such time as any affected facility is assigned an allowable emission rate by the department, at no time thereafter shall that rate be changed due to inclusion or shutdown of any affected facility at the source.

(3) (a) A source may petition the department to establish an allowable emission rate which may be apportioned without regard to individual affected facility heat input provided that the conditions specified in paragraphs (b), (c), (d), and (e) of this subsection are met. Such allowable emission rate shall be determined according to the following equation:

$$F = (AB + DE)/C$$

Where:

A = the allowable emission rate (in pounds per milion BTU input), as determined according to 401 KAR 59:015, Section 3(1);

B = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced on or after the applicable classification date within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the department;

C = the total rated heat input (in millions of BTU per hour) of all affected facilities within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the department;

D = the total emission rate (in pounds per million BTU input) as determined according to subsection (1) of this section;

E = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced before the applicable classification date;

F = the alternate allowable emission rate (in pounds per actual million BTU input).

(b) At no time shall the owner or operator of the source allow the total emissions (in pounds per hour) from all affected facilities within the source divided by the total actual heat input (in millions of BTU per hour) of all affected facilities within the source to exceed the alternate allowable emission rate as determined by paragraph (a) of this subsection.

(c) At no time shall the owner or operator of any source subject to federal new source performance standards allow the emissions from any affected facility commenced on or after the applicable classification date to exceed the allowable emission rate determined by use of that affected

facility's rated heat input (instead of the heat input as determined by subsection (1), of this section) as specified in 401 KAR 59:015, Sections 4 and 5.

(d) The owner or operator of the source must demonstrate compliance with this subsection by conducting a performance test according to 401 KAR 50:045 on each affected facility under such conditions as may be specified by the department.

(e) Upon petition, the department will establish an alternate emission rate in accordance with this subsection if the owner or operator demonstrates to the department's satisfaction that the source will maintain compliance with this subsection on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided for in Section 3(3), no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from that affected facility:

(1) Particulate matter in excess of that specified in Appendix A, of this regulation;

(2) Emissions which exhibit greater than twenty (20) percent opacity in regions classified as Priority I with respect to particulate matter, except:

(a) That, for cyclone or pulverized fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than two (2) consecutive minutes in any sixty (60) consecutive minutes;

(b) That, for stoker fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of forty (40) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned;

(c) For emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions provided the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

(3) Emissions which exhibit greater than forty (40) percent opacity in regions classified as Priority II or III with respect to particulate matter except:

(a) That, for cyclone or pulverized fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than two (2) consecutive minutes in any sixty (60) consecutive minutes;

(b) That, for stoker fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of sixty (60) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned;

(c) For emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions provided the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

(4) The emission limitations contained in other subsections of this section shall not apply to any affected facility (with more than 250 million BTU per hour heat input capacity which was in being or under construction before August 17, 1971, or any affected facility with 250 million BTU per hour capacity or less which was in being or under construction prior to April 9, 1972) if that affected facility was in compliance prior to April 9, 1972, with, or has a valid permit to operate within the provisions of the previous Kentucky Air Pollution Control Commission Regulation No. 7 entitled "Prevention and Control of Emissions of Particulate Matter from Combustion of Fuel in Indirect Heat Exchangers." These affected facilities shall comply with the emission limitations in that regulation except that replacement of the particulate emissions control device associated with the affected facility shall subject it to the standard contained in this section.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided for in Section 3(3), no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from that affected facility, any gases which contain sulfur dioxide in excess of that specified in Appendix B of this regulation.

(2) When different fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

Allowable Sulfur Dioxide Emission,

$$\text{lb/MM BTU} = \frac{y\,(a) + z\,(b)}{y + z}$$

Where:

y is the percent of total heat input derived from liquid or gaseous fuel;

z is the percent of total heat input derived from solid fuel;

a is the allowable sulfur dioxide emission in pounds per million BTU heat input derived from liquid or gaseous fuel; and

b is the allowable sulfur dioxide emissions in pounds per million BTU heat input derived from solid fuel.

(3) Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

(4) In counties classified as VA with respect to sulfur dioxide, for sources having a total heat input greater than fifteen hundred million BTU per hour (1500 MM BTU/hr.) as determined by Section 3(1), no owner or operator shall allow the annual average sulfur dioxide emission rate from all existing and new affected facilities combined at the source to exceed 0.60 pounds per million BTU.

Section 6. Monitoring of Operations. (1) The sulfur content of solid fuels, as burned, shall be determined in accordance with the methods specified by the department.

(2) The sulfur content of liquid fuels, as burned, shall be determined in accordance with the methods specified by the department.

(3) The rate of fuel burned for each fuel shall be measured daily or at shorter intervals and recorded. The heating value and ash content of fuels shall be ascertained at least once per week and recorded. Where the indirect heat exchanger is used to generate electricity, the average electrical output and the minimum and maximum hourly generation rate shall be measured and recorded daily.

(4) The owner or operator of any indirect heat exchanger of more than 250 million BTU per hour heat input subject

to the provisions of this regulation shall maintain a file of all measurements required by this regulation and summarized monthly. The record of any such measurement(s) and summary shall be retained for at least two (2) years following the date of such measurements and summaries.

(5) The department may require for any indirect heat exchanger of less than 250 million BTU per hour heat input any or all the fuel monitoring required by this section.

(6) For an indirect heat exchanger that does not use a flue gas desulfurization device, a continuous monitoring system as specified in 401 KAR 61:005 for measuring sulfur dioxide emissions is not required if the owner or operator monitors such emissions by fuel sampling and analysis pursuant to Section 7(6) of 401 KAR 59:015.

Section 7. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Sections 4 and 5 shall be conducted according to the following methods (filed by reference in 401 KAR 50:015):

(a) Reference Method 1 for the selection of sampling site and sample traverses;

(b) Reference Method 3 for gas analysis to be used when applying Reference Methods 5, 6 and 7;

(c) Reference Method 5 for the concentration of particulate matter and the associated moisture content;

(d) Reference Method 6 for the concentration of sulfur dioxide;

(e) Reference Method 7 for the concentration of nitrogen oxides.

(2) For Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the department. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C (320°F).

(3) For Reference Methods 6 and 7, the sampling site shall be the same as that selected for Reference Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) m (3.28 ft.). For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6, the minimum sampling time shall be twenty (20) minutes and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two (2) samples shall constitute one (1) run. Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7, each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals. The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(c), (d), and (e) of this section, the emissions expressed in g/million cal (lb/million BTU) shall be determined by the following equation:

$$E = CF \frac{20.9}{20.9 - \%O_2}$$

Where:

E = pollutant emission, g/million cal (lb/million BTU).

C = pollutant concentration, g/dscm (lb/dscf) determined by Reference Method 5, 6 or 7.

F = a factor as determined in 401 KAR 59:015, Section 7.

$\%O_2$ = oxygen content by volume (expressed as percent), dry basis.

Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures for Reference Method 3 as applicable. The sample shall be obtained as follows:

(a) For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point for Reference Method 6 and 7 determinations, respectively. For Reference Method 7, the oxygen sample shall be obtained using the grab sampling and analysis procedures for Reference Method 3.

(b) For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 under subsection (2) of this section. Reference Method 1 shall be used for selection of the number of traverse points except that no more than twelve (12) sample points are required.

(7) When combinations of fossil fuels are fired, the heat input, expressed in cal/hr (BTU/hr), shall be determined during each testing period by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned. Gross calorific value shall be determined in accordance with ASTM methods D2015-66(72) (solid fuels), D240-64(73) (liquid fuels), or D1826-64(70) (gaseous fuels), as applicable (ASTM designations filed by reference in 401 KAR 50:015). The rate of fuels burned during each testing period shall be determined by suitable methods and shall be confirmed by a material balance over the steam generation system.

Section 8. Compliance Timetable. (1) Affected facilities located in areas designated as attainment for sulfur dioxide and/or particulate matter shall be in compliance *as of June 6, 1979* [on the effective date of this regulation].

(2) (a) In Class I counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source whose total rated capacity is sixteen thousand million BTU per hour (16,000 MM BTU/hr) or more shall be required to complete the following:

1. Submit a final control plan for achieving compliance with this regulation no later than May 1, 1978;

2. Award contracts for complying coal by January 1, 1979;

3. Initiate use of such complying coal on or before December 1, 1979;

4. Demonstrate compliance by performance tests on or before October 1, 1981.

(b) In Class IVA counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than fifteen hundred million BTU per hour (1,500 MM BTU/hr) but less than twenty-one thousand million BTU per hour (21,000 MM BTU/hr) shall be required to complete the following:

1. Submit a final control plan for achieving compliance with this regulation no later than May 1, 1979;

2. Award contracts for complying coal by August 1, 1979;

3. Initiate use of such complying coal on or before January 1, 1980;

4. Demonstrate compliance by performance tests on or before March 1, 1980.

(c) In Class IVA counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than twenty-one thousand million BTU per hour (21,000 MM BTU/hr) shall be required to complete the following:

1. Submit a control plan for flue gas desulfurization and initiate construction of a coal washing plant on or before June 1, 1978;
2. Issue invitations for bids for construction and installation of flue gas desulfurization equipment on or before October 1, 1978;
3. Award contract for construction and installation of flue gas desulfurization equipment on or before March 1, 1979;
4. Initiate construction of flue gas desulfurization equipment on or before December 1, 1979;
5. Complete construction of coal washing plant on or before December 1, 1980;
6. Complete construction of flue gas desulfurization equipment on or before June 1, 1982;
7. Demonstrate compliance by performance tests on or before September 1, 1982.

[(d) The owner or operator of any affected facility located in any area designated non-attainment for sulfur dioxide and/or particulate matter, except as provided for in paragraphs (a), (b), and (c) of this subsection, shall demonstrate compliance with this regulation as expeditiously as practicable but in no case later than December 31, 1982.]

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982

RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 1233.

(See Appendix A and Appendix B to 401 KAR 61:015 on following pages.)

APPENDIX A TO 401 KAR 61:015
ALLOWABLE PARTICULATE EMISSION RATES

For sources having a Total Heat Input Capacity (as determined by Section 3(1) of this regulation) of:

The standard (in pounds per million BTU actual heat input) is (based upon the Priority classification with respect to particulates of the Region in which the source is located):

(MM BTU/hr)	Priority I	Priority II	Priority III
10 or less	0.56	0.75	0.80
50	0.38	0.52	0.57
100	0.33	0.44	0.49
250	0.26	0.35	0.40
500	0.22	0.30	0.34
1000	0.19	0.26	0.30
2500	0.15	0.21	0.24
5000	0.13	0.18	0.21
7500	0.12	0.16	0.19
10000 or more	0.11	0.15	0.18

Interpolation of allowable emissions for intermediate heat input values not specified above may be accomplished by use of the equations shown below for the appropriate heat input range specified. In all equations X = millions of BTU per hour heat input as determined by Section 3(1) of this regulation, and Y = allowable particulate emissions in pounds per million BTU actual heat input.

Region Classification with respect to Particulate Matter	Range (MM BTU/Hr)	Allowable (Pounds/MM BTU)
Priority I	10 to 10,000	$Y = 0.9634\ X^{-0.2356}$
Priority II	10 to 10,000	$Y = 1.2825\ X^{-0.2330}$
Priority III	10 to 10,000	$Y = 1.3152\ X^{-0.2159}$

ALLOWABLE SULFUR DIOXIDE EMISSION RATES

All standards are three (3) hour averages unless the provisions of Section 6(6) apply in which case the standard is a twenty-four (24) hour average.

For sources having a total heat input (as determined by Section 3(1) [of this regulation]) of:	The standard (in pounds per million BTU actual heat input) is (based upon the classification with respect to sulfur dioxide of the county in which the source is located):													
	CLASS I		CLASS II		CLASS III		CLASS IV		CLASS IVA		CLASS V		CLASS VA	
(MM BTU/Hr.)	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel
10 or less	3.0	5.0	4.0	6.0	4.6	7.0	5.4	8.0	5.4	8.0	6.0	9.0	6.0	9.0
50	1.5	2.4	2.4	3.7	3.2	4.8	4.3	6.4	4.3	6.4	4.9	7.3	4.9	7.3
100	1.2	1.8	2.0	3.0	2.7	4.1	4.0	5.9	4.0	5.9	4.5	6.7	4.5	6.7
150	1.0	1.5	1.8	2.7	2.5	3.7	3.7	5.6	3.7	5.6	4.3	6.4	4.3	6.4
200	0.9	1.3	1.6	2.5	2.3	3.5	3.6	5.4	3.6	5.4	4.1	6.2	4.1	6.2
250-1500	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	3.5	5.2	4.0	6.0	4.0	6.0
greater than 1500 but less than 21,000	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.3	3.5	4.0	6.0	1.1	1.1
21,000 or more	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.1	3.1	4.0	6.0	1.1	1.1

Interpolation of allowable emissions for rated capacity values between 10 and 250 million BTU heat input may be accomplished by use of the equations shown below for the appropriate fuel specified. In all equations Y = allowable sulfur dioxide emission in pounds per million BTU actual heat input, X = millions of BTU per hour heat input capacity rating as determined by Section 3(1) [of this regulation].

COUNTY CLASS	FUEL	ALLOWABLE (POUNDS/MM BTU)
I	Liquid/Gaseous	$Y = 7.7223 X^{-0.4106}$
	Solid	$Y = 13.8781 X^{-0.4434}$
II	Liquid/Gaseous	$Y = 8.0681 X^{-0.3047}$
	Solid	$Y = 11.9134 X^{-0.2979}$
III	Liquid/Gaseous	$Y = 7.7966 X^{-0.2291}$
	Solid	$Y = 11.9872 X^{-0.2336}$
IV	Liquid/Gaseous	$Y = 7.3639 X^{-0.1347}$
	Solid	$Y = 10.8875 X^{-0.1338}$
IVA	Liquid/Gaseous	$Y = 7.3639 X^{-0.1347}$
	Solid	$Y = 10.8875 X^{-0.1338}$
V	Liquid/Gaseous	$Y = 8.0189 X^{-0.1260}$
	Solid	$Y = 12.0284 X^{-0.1260}$
VA	Liquid/Gaseous	$Y = 8.0189 X^{-0.1260}$ [$Y = 7.7223 X^{-0.4106}$]
	Solid	$Y = 12.0284 X^{0.1260}$ [$Y = 13.8781 X^{-0.4434}$]

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:020. Existing process operations.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing process operations which are not subject to another particulate emission standard within this chapter.

Section 1. Applicability. *(1)* The provisions of this regulation shall apply to each affected facility, associated with a process operation, which is not subject to another emission standard with respect to particulates in this chapter, commenced before the classification date defined below.

(2) Emissions of particulate matter which do not exit through a control device or stack are subject to the provisions of 401 KAR 63:010.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Process operation" means any method, form, action, operation or treatment of manufacturing or processing, and shall include any storage or handling of materials or products, before, during, or after manufacturing or processing.

(2) "Process weight" means the total weight of all materials introduced into any affected facility which may cause any emission of particulate matter, but does not include liquid and gaseous fuels charged, combustion air, or uncombined water.

(3) "Classification date" means July 2, 1975.

(4) "Process weight rate" means a rate established as follows:

(a) For continuous or long-run steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof;

(b) For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period; and

(c) Where the nature of any process operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation which results in the minimum value for allowable emission shall apply.

(5) "Affected facility" as related to process operations means the last operation preceding the emission of air contaminants which results:

(a) In the separation of the air contaminant from the process materials; or

(b) In the conversion of the process materials into air contaminants, but does not include an air pollution abatement operation.

Section 3. Standard for Particulate Matter. (1) *Opacity standard.*

(a) No person shall cause, suffer, allow or permit *any continuous visible* [the] emission into the open air *from a control device or stack associated with* [of particulate matter from] any affected facility [, or from all air pollution control equipment installed on any affected facility] which[:]

[(a)] is equal to or greater than forty (40) percent opacity[; or]

(b) No person shall cause, suffer, allow or permit any intermittent visible emission into the open air from a control device or stack associated with any affected facility which is equal to or greater than forty (40) percent opacity for twelve (12) or more times in any consecutive sixty (60) minute sampling period or is at any time greater than sixty (60) percent opacity.

(2) Mass emission standard.

(a) No person shall cause, suffer, allow or permit the emission into the open air of particulate matter which exits from a control device or stack associated with any affected facility which

[(b)] is in excess of the quantity specified in Appendix A of this regulation.

(b) [(2)] An affected facility may elect to substitute the following standards in lieu of the value given in Appendix A:

1. [(a)] A maximum exit particulate emission concentration of 0.02 grains per standard cubic foot;

2. [(b)] Air pollution control equipment of at least ninety-seven (97) percent actual efficiency; *and*

3. [(c)] Addition of dilution air shall not constitute compliance. [; and]

[(d) At least ninety (90) percent of the particulate emissions from the affected facility must be vented to the control device.]

Section 4. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Section 3 shall be conducted according to the following methods (*Kentucky Method 50 and reference methods are* filed by reference in 401 KAR 50:015):

(1) Kentucky Method 50 for sources located in or having a significant impact upon non-attainment areas for total suspended particulates as designated in 401 KAR 51:010, and Reference Method 5 for sources located in all other areas, for the emission rates of particulate matter and the associated moisture content.

(2) Reference Method 1 for sample and velocity traverses.

(3) Reference Method 2 for velocity and volumetric flow rate.

(4) Reference Method 3 for gas analysis.

(5) Reference Method 9 for *continuous* visible emissions.

(6) For intermittent visible emissions, the method to determine opacity shall be Reference Method 9 except that the readings which are taken at fifteen (15) second intervals shall not be averaged over six (6) minutes. The standard in Section 3(1)(b) shall be exceeded if any twelve (12) or more readings in a period of sixty (60) consecutive minutes are equal to or greater than forty (40) percent opacity or if any single reading is above sixty (60) percent opacity.

(7) [(6)] For Kentucky Method 50 and Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sample volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling time or volumes, when necessitated by process variables or other factors, may be approved by the department.

APPENDIX A TO 401 KAR 61:020 ALLOWABLE RATE OF PARTICULATE EMISSION BASED ON PROCESS WEIGHT RATE

Process Weight Rate		Maximum Allowable Emission Rate
Lb/Hr.	Ton/Hr.	Lb/Hr.
[100 or less	0.05 or less	0.551]
[200	0.10	0.877]
[400	0.20	1.40]
[600	0.30	1.83]
[800	0.40	2.22]
1,000 *or less*	0.50 *or less*	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.1
200,000	100.00	51.3
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

Interpolation of the data for process weight rates up to 60,000 lb/hr. shall be accomplished by use of the equation

$$E = 4.10P^{0.67}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr. shall be accomplished by the use of the equation

$$E = 55.0P^{0.11}-40$$

where E = rate of emission in lb/hr and P = process weight rate in tons/hr.

JACKIE SWIGART, Secretary
ADOPTED: May 13, 1982
RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.
SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 1233.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:075. Steel plants and foundries using existing electric arc furnaces.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for control of emissions from steel plants or foundries using existing electric arc furnaces.

Section 1. Applicability. The provisions of this regulation apply to the following affected facilities in steel plants and foundries commenced before the classification date defined below: electric arc furnaces and/or associated metallurgical equipment located in the same shop as well as associated dust-handling equipment.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Electric arc furnace (EAF)" means any furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. Furnaces from which the molten steel is cast into the shape of finished products, such as in a foundry, are affected facilities included within the scope of this definition. Furnaces which, as the primary source of iron, continuously feed prereduced ore pellets are not affected facilities within the scope of this definition.

(2) "Dust-handing equipment" means any equipment used to handle particulate matter collected by the control device and located at or near the control device for an EAF subject to this regulation.

(3) "Control device" means the air pollution control equipment used to remove particulate matter generated by an EAF(s) from the effluent gas stream.

(4) "Capture system" means the equipment (including ducts, hoods, fans, dampers, etc.) used to capture or transport particulate matter generated by an EAF and associated metallurgical equipment to the air pollution control device.

(5) "Associated metallurgical equipment" in the shop includes but is not limited to scrap pre-heaters and degreasers, and equipment for hot metal transfer, charging, lancing, boiling, slagging and de-slagging, tapping, inoculating, teeming, hot-topping, vacuum de-gassing, continuous casting, etc.

(6) "Charge" means the addition of iron and steel scrap or other materials into the top of an electric arc furnace.

(7) "Charging period" means the time period commencing at the moment an EAF starts to open and ending [either] three (3) minutes after the EAF roof is returned to its closed position [or six (6) minutes after commencement of opening of the roof, whichever is longer].

(8) "Tap" means the pouring of molten steel from an EAF.

(9) "Tapping period" means the time period commencing at the moment an EAF begins to tilt to pour and ending [either three (3) minutes after an EAF returns to an upright position [or six (6) minutes after commencing to tilt, whichever is longer].

(10) "Meltdown and refining" means that phase of the steel production cycle when charge material is melted and undesirable elements are removed from the metal.

(11) "Meltdown and refining period" means the time period commencing at the termination of the initial charging period and ending at the initiation of the tapping period, excluding any intermediate charging periods.

[(12) "Shop opacity" means the arithmetic average of twenty-four (24) or more opacity observations of emissions from the shop taken in accordance with Reference Method 9 of Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, for the applicable time periods.]

(12) [(13)] "Heat time" means the period commencing when scrap is charged to an empty EAF and terminating when the EAF tap is completed.

(13) [(14)] "Shop" means the building which houses one (1) or more EAF.

(14) [(15)] "Direct shell evacuation system" means any system that maintains a negative pressure within the EAF above the slag or metal and ducts the emissions to the control device.

(15) [(16)] "Concentrated discharge" means that the outlet from a control device consists of either stacks (one (1) or more) or openings on the device's top or side which has (have) a total area less than five (5) percent of the corresponding top or side and which has (have) a length of not more than twice the width.

(16) [(17)] "Dispersed discharge" means that the outlet from a control device consists of opening(s) on the device's top or side which has (have) a total area exceeding five (5) percent of the corresponding top or side or which have a length more than twice the width.

(17) [(18)] "Classification date" means October 21, 1974.

Section 3. Standard for Particulate Matter. (1) On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from an electric arc furnace and associated metallurgical equipment any gases which:

(a) Exit from a control device and contain particulate matter in excess of 0.010 grains/dscf (twenty-three (23) mg/dscm);

(b) Exit from a control device and exhibit opacity in excess of:

1. Ten (10) percent for a control device with a concentrated discharge.

2. Three (3) percent for a control device with a dispersed discharge.

(c) Exit directly from a shop and exhibit an opacity greater than *twenty (20)* [ten (10)] percent *for more than eleven (11) times as observed at fifteen (15) second intervals over a period of any sixty (60) consecutive minutes. Reference Method 9 of Appendix A to 40 CFR 60, filed by reference in 401 KAR 50:015, shall be used in determining opacity in this paragraph,* except *for averaging time and number of observations.* [:]

[1. Shop opacity less than thirty (30) percent may occur which is caused by an EAF during its charging period.]

[2. Shop opacity less than thirty (30) percent may occur which is produced by an EAF during its tapping period.]

[3. Where the capture system is operated such that the roof of the shop is closed during the charge and the tap, and emissions to the atmosphere are prevented until the roof is opened after completion of the charge or tap, the shop opacity standards under this paragraph shall apply when the roof is opened and shall continue to apply for the length of time defined by the charging and/or tapping periods.]

(2) On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from dust-handling equipment any gases which exhibit ten (10) percent opacity or greater.

Section 4. Monitoring of Operations. (1) The owner or operator subject to the provisions of this regulation shall maintain records daily of the following information:

(a) Time and duration of each charge;

(b) Time and duration of each tap;

(c) All flow rate data obtained under subsection (2) of this section or equivalent obtained under subsection (4) of this section; and

(d) All pressure data obtained under subsection (5) of this section.

(2) Except as provided under subsection (4) of this section, the owner or operator subject to the provisions of this regulation shall install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each separately ducted hood. The monitoring device(s) may be installed in any appropriate location in the exhaust duct such that reproducible flow rate monitoring will result. The flow rate monitoring device(s) shall have an accuracy of plus or minus ten (10) percent over its normal operating range and shall be calibrated according to the manufacturer's instructions. The department may require the owner or operator to demonstrate the accuracy of the monitoring device(s) relative to Methods 1 and 2 of Appendix A of 40 CFR 60.

(3) When the owner or operator of an EAF is required to demonstrate compliance with the standard under Section 3(1)(c), and at any other time the department may require; the volumetric flow rate through each separately ducted hood shall be determined during all periods in which the hood is operated for the purpose of capturing emissions from the EAF using the monitoring device under subsection (2) of this section. The owner or operator may petition the department for reestablishment of these flow rates whenever the owner or operator can demonstrate to the department's satisfaction that the EAF operating conditions upon which the flow rates were previously established are no longer applicable. The flow rates determined during the most recent demonstration of compliance shall be maintained (or may be exceeded) at the appropriate level for each applicable period. Operation at lower flow rates may be considered by the department to be unacceptable operation and maintenance of the affected facility.

(4) The owner or operator may petition the department to approve any alternative method that will provide a continuous record of operation of each emission capture system.

(5) Where emissions during any phase of the heat time are controlled by use of a direct shell evacuation system, the owner or operator shall install, calibrate and maintain a monitoring device that continuously records the pressure in the free space inside the EAF. The pressure shall be recorded as fifteen (15) minute integrated averages. The monitoring device may be installed in any appropriate location in the EAF such that reproducible results will be obtained. The pressure monitoring device shall have an accuracy of plus or minus five (5) mm of water gauge over its normal operating range and shall be calibrated according to the manufacturer's instructions.

(6) When the owner or operator of an EAF is required to demonstrate compliance with the standard under Section

3(1)(c) and at any other time the department may require, the pressure in the free space inside the furnace shall be determined during the meltdown and refining period(s) using the monitoring device under subsection (5) of this section. The owner or operator may petition the department for reestablishment of the fifteen (15) minute integrated average pressure whenever the owner or operator can demonstrate to the department's satisfaction that the EAF operating conditions upon which the pressures were previously established are no longer applicable. The pressure determined during the most recent demonstration of compliance shall be maintained at all times the EAF is operating in a meltdown and refining period. Operation at higher pressures may be considered by the department to be unacceptable operation and maintenance of the affected facility.

(7) Where the capture system is designed and operated such that all emissions are captured and ducted to a control device, the owner or operator shall not be subject to the requirements of this section.

(8) Where each EAF in a shop has an actual tapping capacity of less than ten (10) tons, the owner or operator shall not be subject to the requirements of this section.

Section 5. Test Methods and Procedures. (1) Reference methods in Appendix A of 40 CFR 60, except as provided under 401 KAR 50:045, shall be used to determine compliance with this regulation as follows:

(a) Reference Method 5 for concentration of particulate matter and associated moisture content;

(b) Reference Method 1 for sample and velocity traverses;

(c) Reference Method 2 for velocity and volumetric flow rate;

(d) Reference Method 3 for gas analysis; and

(e) Reference Method 9 for opacity determination *of gases discharged through a control device and from dust-handling equipment.*

(2) For Reference Method 5, the sampling time for each run shall be at least four (4) hours. When a single EAF is sampled, the sampling time for each run shall also include an integral number of heats. Shorter sampling times, when necessitated by process variables or other factors, may be approved by the department. The minimum sample volume shall be 4.5 dscm (160 dscf).

(3) For the purpose of this section, the owner or operator shall conduct the demonstration of compliance with Section 3(1)(c) and furnish the department a written report of the results of the test.

(4) During any performance test required under 401 KAR 61:005 no gaseous diluents may be added to the effluent gas stream after the fabric in any pressurized fabric filter collector, unless the amount of dilution is separately determined and considered in the determination of emissions.

(5) When more than one (1) control device serves the EAF(s) being tested, the concentration of particulate matter shall be determined using the equation in Appendix A to this regulation.

(6) Any control device subject to the provisions of this regulation shall be designed and constructed to allow measurement of volumetric flow rate and emissions using applicable test methods and procedures.

(7) Where emissions from any EAF(s) are combined with emissions from other affected facilities in the same shop and controlled by a common capture system and control device, the owner or operator may use any of the following procedures during a performance test:

(a) Base compliance on control of the combined emissions;

(b) Utilize a method acceptable to the department which compensates for the emissions from the other affected facilities; and

(c) Any combination of the criteria of paragraphs (a) and (b) of this subsection.

Section 6. Compliance Timetable. The owner or operator of an affected facility shall demonstrate compliance with Section 3(1)(c) on or before October 15, 1982. Compliance with all other provisions of the regulation shall have been demonstrated on or before June 6, 1979.

APPENDIX A TO 401 KAR 61:075
EQUATION FOR CONCENTRATION
OF PARTICULATE MATTER
FOR MORE THAN ONE CONTROL DEVICE

$$C_s = \frac{\sum_{n=1}^{N} (C_s Q_s)_n}{\sum_{n=1}^{N} (Q_s)_n}$$

Where:

C_s = concentration of particulate matter in mg/dscm (gr/dscf) as detemined by Reference Method 5.

N = total number of control devices tested.

Q_s = volumetric flow rate of the effluent gas stream in dscm/hr (dscf/hr) as determined by Reference Method 2.

$(C_sQ_s)_n$ or $(Q_s)_n$ = value of the applicable parameter for each control device tested.

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982

RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 1233.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:140. Existing by-product coke manufacturing plants.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of emissions from existing by-product coke manufacturing plants.

Section 1. Applicability. The provisions of this regulation are applicable to each affected facility commenced before the classification date defined below.

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010 and 401 KAR 61:005.

(1) "Affected facility" means a by-product coke oven battery.

(2) "Classification date" means April 9, 1972.

(3) "Coke oven battery" means a number of slot-type coking chambers arranged side by side.

(4) "Charging" means the process of conveying coal and dropping it into a coke oven through the charging holes or ports located on top of the oven.

(5) "Coking" means the destructive distillation of coal in the absence of oxygen.

(6) "Coke" means a solid form of carbon resulting from the destructive distillation of coal.

(7) "Coke oven" means a refractory lined, heated, slot-type chamber in which coke is produced.

(8) "Chuck door" means the port for the leveling bar.

(9) "Leveling bar" means a structured steel bar pushed back and forth horizontally through the chuck door and used to eliminate the peaks in the coal charged in the oven.

(10) "Collecting main" means the horizontal manifold connected to the standpipes used to conduct the volatile materials to the by-products plant.

(11) "Larry car" means the apparatus used to charge coal into an empty oven. It is also known as a charging car.

(12) "Pusher machine" means a large apparatus which travels on rails alongside the battery and used to remove doors and push coke from the ovens.

(13) "Gooseneck" means a short curved cast iron refractory lined pipe that conveys the volatiles from the standpipe to the collector main.

(14) "Standpipe" means a short vertical refractory lined pipe which conducts volatiles from an oven through the gooseneck to the collector main.

(15) "Quench" means the process whereby water is used to cool the hot coke.

(16) "Quenching car" means an apparatus used to convey hot coke to the quenching tower. It is also known as a wharf car.

(17) "Charging period" means for larry car charging systems, the period of time commencing when the first hopper gate is opened and ending when the last topside port lid is replaced. The charging period includes the period of time during which the port lid is reopened in order to sweep spilled coal into the oven.

(18) "Total coke oven doors" means push and coke side doors with the chuck doors considered to be part of the push side doors.

Section 3. Standards for Particulate Matter. No person subject to the provisions of this regulation shall cause, suffer or allow particulate matter to be discharged to the atmosphere from each affected facility or operation of a by-product coke oven battery except as follows:

(1) Coke oven charging: No visible emissions during the charging cycle from the control equipment, the charging ports, the larry cars or the open chuck door, *except for an average of twenty-five (25) seconds of any visible emissions (excluding water vapor) per charge, averaged over five (5) consecutive charges* [with an opacity greater than twenty (20) percent for a period or periods aggregating more than two (2) minutes in any consecutive sixty (60) minutes].

(2) Battery topside leaks: *No more than five (5) percent of the charging ports and ten (10) percent of the standpipes on operating ovens shall be leaking (exhibiting visible emissions except for steam or non-smoking flame) at any time* [The number of leaks (any visible emissions except for steam or non-smoking flame) at any time shall not exceed five (5) percent of the total number of potential leaks on the battery topside. The total number of potential leaks on the battery topside is equal to the number of operating ovens multiplied by the number of charging lids and standpipes per oven].

(3) Doors: No visible emission, except non-smoking flame, from more than ten (10) percent of the total coke oven doors on a battery.

(4) Combustion stack: No visible emission (other than water mist or vapor) shall exceed twenty (20) percent opacity from any coke oven combustion stack.

(5) Pushing: *Emissions shall be controlled such that:*

(a) No visible emissions, as observed at fifteen (15) second intervals, shall exceed twenty (20) percent opacity from the time the oven door removal has been completed until the hot car is inside the quench tower except for ten (10) percent of the total number of observations recorded [At least eight-five (85) percent of the total particulate matter generated by the pushing operation shall be captured by the control device and the captured emissions cleaned further such that]

(b) The emission rate from the control device *shall not* [in no case] exceed[s] 0.030 pounds of filterable particulate per ton of coke pushed, averaged over a number of pushes.

(6) Quenching:

(a) No visible emissions, except water vapor or mist shall exceed an opacity of twenty (20) percent during the quenching operations.

(b) No process water shall be used for quenching and the *make-up* [quench] water shall *not contain total dissolved solids concentration in excess of 750 mg/liter* [be at least equal to or better than the quality of the water in the river or stream from which it is drawn].

(c) The quench tower draft shall be adequate to ensure that all visible quenching gases exit through the quench tower baffles.

Section 4. Standard for Sulfur Dioxide. Coke oven gas shall not be burned or discharged unless it contains a concentration of sulfur compounds (expressed as sulfur dioxide) *as determined by Appendix A of this regulation* that will result in emissions of no more than ninety-five (95) pounds of equivalent sulfur dioxide per million cubic feet of coke oven gas produced. Included in this are all sulfur compounds, expressed as sulfur dioxide, emitted from sulfur recovery equipment used to process the sulfur compounds removed from coke oven gas.

Section 5. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, and subsections (2) and (3) of this section, performance tests used to demonstrate com-

pliance with Sections 3 and 4 shall be conducted according to the following methods (filed by reference in 401 KAR 50:015):

(a) Reference Method 9 for combustion stack opacity *and pushing operation, except for time averaging and number of observations.* [;]

(b) *Method 209 B from the Standard Methods for the Evaluation of Water and Wastewater, Fifteenth (15th) Edition, 1980 for determining total dissolved solids in make-up water.* [Reference Method 5 for the particulate mass emission rate for pushing emissions. The front half of the sampling train shall be used to determine the particulate emissions rate with possible modifications to allow high volume sampling and reduced probe-filter temperatures.]

(2) Determination of sulfur in coke oven gas. Cleaned coke oven gas and any Claus plant tail gas shall be sampled for hydrogen sulfide, carbonylsuflide, and carbon disulfide by gas chromatograph separation and flame photometric or thermal conductivity detection. Alternate methods may be approved by the department. Clean gas and tail gas flow shall be measured by in-line continuous orifice, venturi or elbow tap flow meters. Compliance testing shall consist of simultaneous measurement of sweet (clean) coke oven gas and sulfur recovery tail gas concentrations and flows. Four (4) samples per hour shall be acquired for concentration and flows during a four (4) hour test period. Compliance shall be determined from the arithmetic average of the sixteen (16) values calculated by using the formula in Appendix A of this regulation.

(3) Determination of visible emissions during the oven charging period:

(a) Principle. The visible emissions emitted from charging systems and oven ports are to be determined visually by an observer who is familiar with coke oven battery operations. *Observations for five (5) consecutive charges are to be recorded unless the standard is exceeded before the five (5) charges are completed.* [Observations for sixty (60) consecutive minutes as specified by the emission standard are required unless the standard is exceeded in a fewer number of charges.]

(b) Procedure. The observer is to stand such that he has a good view of the oven being charged. Upon observing any visible emission [exceeding twenty (20) percent opacity,] an accumulative stopwatch is started. The watch is stopped when the visible emission *stops* [drops below twenty (20) percent] and is restarted when the visible emission reappears [at over twenty (20) percent opacity]. The observer is to continue this procedure for the entire charging period. Visible emissions may occur simultaneously from several points during a charge; e.g., from around all drop sleeves at the same time. In this case, the visible emissions are timed collectively, not independently. Also, visible emissions may start from one (1) source immediately after another source stops. This will be timed as one (1) continuous visible emission. The following visible emissions are not to be timed:

1. Visible emissions from burning coal spilled on top of the oven or oven lid during charging;

2. Visible emissions that drift from the top of a larry car hopper, but have already been timed as a visible emission from the drop sleeve below the hopper. [When the slide gate closes on a larry car hopper after the coal has been added to the oven, the gate may not provide an airtight seal. On occasion a puff of smoke observed at the drop sleeve shrouds will be forced past the slide gate up into the larry car hopper. From there the smoke may drift from the top of the larry car hopper over a much longer period than it was visible at the shroud. However, if the larry car hopper does not have a slide gate or the slide gate is left open or only partially closed, visible emissions may quickly pass through the larry car hopper without being observed at the shroud. In this case, the emissions from the larry car hopper will appear as a strong surge of smoke and shall be timed.]

(c) Recording charging emissions. The time recorded on the stop watch is the total time that visible emissions [exceeding twenty (20) percent opacity] were observed during the charge. [For any consecutive sixty (60) minutes, one (1) value of the seconds of visible emissions over twenty (20) percent opacity as measured by the stopwatch shall be recorded.]

(4) Determination of visible emissions from coke oven topside leaks:

(a) Principle. The visible emissions produced from leaking offtake systems, and topside lids are determined visually by an observer who is familiar with coke oven battery operations.

(b) Procedure. The observer shall inspect the coke oven battery by travelling the length of the battery topside at a steady pace, pausing only to make appropriate entries on the inspection report. Travel at a normal walking pace one (1) length of the coke oven battery shall constitute a run taking approximately four (4) minutes (for a seventy (70) oven battery) to complete. In performing a run *to determine oven lid leaks,* the observer shall walk the centerline of the battery looking far enough ahead (two (2) or four (4) ovens) of his travel to easily see the oven lids[, offtake systems, or collection mains. If the emissions to be inspected cannot be observed from the battery centerline, an alternative location may be used (e.g., a catwalk)]. During [any] one (1) run, the observer shall record the number of total visible emissions from oven lids, *and during another run the observer shall determine visible emissions from* offtake systems, and collection mains, *from the battery centerline or an alternative location (e.g., a catwalk).* The total number of leaks from the topside shall be recorded on the inspection report sheet. The following emissions shall not be recorded:

1. Visible emissions from lids and standpipe caps that are opened during a decarbonization period *(not to exceed three (3) ovens at any one (1) time)* or charging period.

[2. Visible emissions caused by maintenance work in progress at an oven.]

2. [3.] Steam emissions; this includes steam caused by the vaporization of wet luting material.

(c) Determination of percent topside leaks. The total number of leaks shall be observed during a run and then the percent of *charge port and standpipe* [topside] leaks shall be determined by using the formula*s* given in Appendix B to this regulation.

(5) Door inspection procedure:

(a) Observation. The inspector shall make his observations of door emissions from a location as close to the battery as safety and visibility conditions permit, but generally outside of the pusher machine or hot car tracks. The inspector may move to a closer observation point to determine the source of an emission. The inspector shall start the inspection procedure with an oven at either end of the battery and on either the push side or the coke side of the battery. The inspector shall observe and record any visible emission from the door. Visible emissions from the sealing edge around the perimeter of a door, or, in the case of the pusher side, from the door and the chuck door will be considered as door emissions. Visible emissions from structural leaks, such as buckstay or lintel leaks, will not be considered as door emissions. The inspector will then move to the adjacent door and check for door emissions in a like manner. The inspector will continue this procedure down

the entire length of the battery. If a temporary machine obstruction occurs blocking his view of a series of ovens, he may bypass those ovens and continue down the remainder of the battery, returning to check the bypassed ovens when he has completed that side of the battery. After the inspector has observed the doors on one (1) side of a battery, he shall then proceed directly to the opposite side of the battery and again start at one (1) end of the battery repeating the same procedure as for the previous side.

(b) Determination of percent leaking doors. The total number of leaking doors shall be observed on both sides of the coke oven battery and then the percent of leaking doors shall be determined using the formula given in Appendix C to this regulation.

(6) Determination of quenching visible emissions. The inspector shall make his observations of quenching emissions from a position where he can observe the quench plume. The inspector observes all emissions from the time the wharf car enters the quench tower until the time it leaves the tower after the quench. The maximum opacity of the plume observed against a contrasting background is recorded. If water vapor or mist is present, the opacity is determined after the water vapor or mist is no longer visible in the plume.

Section 6. Compliance Timetable. The owner or operator shall *have* demonstrated compliance with *the standard in* Section 3(5)*(b)* on or before December 31, 1980. *Compliance with the standard in Section 3(2) shall be demonstrated on or before October 15, 1982.* Compliance with all other provisions of this regulation shall have been demonstrated on or before *June 6, 1979* [the effective date of this regulation].

APPENDIX A TO 401 KAR 61:140

Formula for determining sulfur compounds (expressed as SO_2) contained in coke oven gas.

$$\text{Sulfur compounds in coke oven gas} = \frac{C_{swg}V_{swg} + C_{tg}V_{tg}}{V_{fg}}$$

Where:

C_{swg} = the concentration of total reduced sulfur in the sweet gas expressed as SO_2;

C_{tg} = the concentration of total reduced sulfur in the tail gas expressed as SO_2; and

V_{swg}, V_{tg}, V_{fg} = flow rates of sweet gas, tail gas and foul gas, respectively.

APPENDIX B TO 401 KAR 61:140

Formula for determining percent *charge port* [topside] leaks.

$$\text{Percent } \textit{charge port} \text{ [topside] leaks} = \frac{\text{total number of } \textit{charging port} \text{ leaks observed during run}}{\text{[total] number of } \textit{operating ovens} \times \text{charging ports/oven [potential leaks]}} \times 100$$

[Where:

Total number of potential leaks = Number of operating ovens x (charging lids/oven + standpipes/oven).]

Formula for determining percent standpipe leaks.

$$\textit{Percent standpipe leaks} = \frac{\textit{total number of standpipe leaks observed during run}}{\textit{number of operating ovens x standpipes/oven}} \times 100$$

Visible emission occurring during the decarbonization period as provided in Section 5(4)(b)1 shall not be included in the formulas above.

APPENDIX C TO 401 KAR 61:140

Formula for determining the percent door leaks.

$$\text{Door leaks (\%)} = \frac{\text{total number of leaking doors observed}}{2 \times \text{number of operating ovens in the battery}} \times 100$$

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982

RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 1233.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 63:010. Fugitive emissions.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of fugitive emissions.

Section 1. Applicability. The provisions of this regulation are applicable to each affected facility as defined in Section 2.

Section 2. Definitions. Terms used in this regulation not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means an apparatus, operation, or road which emits or may emit fugitive emissions provided that the fugitive emissions from such facility are not elsewhere subject to an opacity standard within the regulations of the Division of Air Pollution.

(2) "Fugitive emissions" *except for affected facilities to which 401 KAR 51:017 or 401 KAR 51:052 are applicable,* means the emissions of *particulate matter* [any air contaminant] into the open air other than from a stack or air pollution control equipment exhaust.

(3) "Open air" means the air outside buildings, structures, and equipment.

(4) "Classification date" means the effective date of this regulation.

Section 3. Standards for Fugitive Emissions. (1) *No owner or operator of an affected facility shall operate the facility without taking reasonable precautions to prevent particulate matter from becoming airborne, nor shall the owner or operator operate the facility in such a manner as to allow visible emissions exhibiting an opacity in excess of twenty (20) percent for twelve (12) or more times in any sixty (60) consecutive minutes. Opacity readings shall be taken at fifteen (15) second intervals according to Reference Method 9 of Appendix A to 40 CFR 60, filed by*

reference in 401 KAR 50:015, except for averaging time and number of observations. [No person shall cause, suffer, or allow any material to be handled, processed, transported, or stored; a building or its appurtenances to be constructed, altered, repaired, or demolished, or a road to be used without taking reasonable precaution to prevent particulate matter from becoming airborne.] Such reasonable precautions *may* [shall] include, when applicable, but not be limited to the following:

(a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;

(b) Application and maintenance of asphalt, oil, water, or suitable chemicals on roads, materials stockpiles, and other surfaces which can create airborne dusts;

(c) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials, or the use of water sprays or other measures to suppress the dust emissions during handling. Adequate containment methods shall be employed during sandblasting or other similar operations;

(d) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne;

(e) The maintenance of paved roadways in a clean condition;

(f) The prompt removal of earth or other material from a paved street which earth or other material has been transported thereto by trucking or earth moving equipment or erosion by water.

(2) No person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.

[(3) When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance or to violate any regulation, the Secretary may order that the building or equipment in which processing, handling and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gasborne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.]

(3) [(4)] The provisions of this *section* [regulation] shall not apply to agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm.

Section 4. Additional Requirements. In addition to the requirements of Section 3, the following shall apply:

(1) At all times when in motion, open bodied trucks, operating outside company property, transporting materials likely to become airborne shall be covered.

(2) Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm shall be conducted in such a manner as to not create a nuisance to others residing in the area. Agricultural practices are not subject to the opacity standard.

(3) The provisions of Section 3(1) and (2) shall not be applicable to temporary blasting or construction operations.

(4) No one shall allow earth or other material being transported by truck or earth moving equipment to be deposited onto a paved street or roadway.

JACKIE SWIGART, Secretary

ADOPTED: May 13, 1982

RECEIVED BY LRC: May 13, 1982 at 1:35 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 1233.

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

803 KAR 2:010. Board procedures.

RELATES TO: KRS 338.051

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted, governing the procedure of the Kentucky Occupational Safety and Health Standards Board. This regulation identifies in detail the procedure to be followed by the board.

Section 1. As used in these rules, unless the context clearly requires otherwise:

(1) "Board" means Kentucky Occupational Safety and Health Standards Board.

(2) "Chairman" means chairman of the Kentucky Occupational Safety and Health Standards Board.

(3) *"Chairman Pro-Tem" means the member of the board that has been elected by the members of the board to chair any meeting of the board in the absence of the chairman.*

(4) "Interested person" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof.

(5) [(4)] "Party" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof who shall have a vested interest to participate in a hearing conducted in accordance with any article of these rules or regulations.

(6) [(5)] "Employer" means any entity for whom a person is employed except those employers excluded in Section 9.

(7) [(6)] "Employee" means any person employed except those employees excluded in Section 9.

Section 2. All board members and the chairman of the board shall be appointed by the Governor who shall administer the oath of office when said board is convened by the Commissioner of the Department of Labor.

Section 3. The board shall meet for the purpose of considering and recommending the adoption and promulgation of occupational safety and health rules, regulations, standards, and secure all expertise, testimony, and evidence necessary to accomplish the purpose of KRS Chapter 338. The board may also consider the revision, revocation, or modification in whole or in part of such safety and health rules, regulations, and standards.

Section 4. The published standards of agencies of the Commonwealth of Kentucky and recognized standards producing organizations which are not agencies of the Commonwealth which are legally incorporated by reference in these rules, have the full force and effect as if they were set forth in their entirety herein. Copies of the standards which are incorporated by reference may be examined in the office of the Secretary of State, Commonwealth of Kentucky, Frankfort, Kentucky. Copies of such private standards may be obtained from the issuing organizations.

Section 5. The board shall not adopt standards for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

Section 6. The board shall meet *semi-annually* [quarterly] or when additional meetings are needed, at the call of its chairman in Frankfort, Kentucky, unless another place of meeting shall be designated by the chairman.

Section 7. A majority of the board constitutes a quorum for the transaction of business. Recommendations, reports, or other decisions of the board require a vote of not less than a majority of all members present. The chairman shall have the same rights and duties as all other members, including the right to introduce, discuss, and vote on any matter before the board.

Section 8. The board shall keep and preserve a record of the time and place of all of its meetings, the members present, the votes and all other formal proceedings, including the appointment of committees. Committees shall keep and preserve a similar record. These records shall be made available to any interested person upon request at prescribed rates.

Section 9. All standards, rules, and regulations adopted by the board shall apply to all employers and employees within the Commonwealth except:

(1) Employees of the United States Government.

(2) Employers, employees and places of employment over which federal agencies other than the *Occupational Safety and Health Administration of the* United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

Section 10. (1) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same conditions, practice, means, method, operation, or process.

(2) Any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for that particular industry.

(3) In the event a standard protects a class of persons larger than employees, the standard shall be applicable under these rules only to employees and their employment and place of employment.

Section 11. (1)(a) Prior to the adoption, promulgation, modification, or revocation of any standard, regulation or order, the board shall conduct a public hearing. Notice of such hearing shall be published not less than ten (10) days before the hearing in a newspaper of general circulation stating the date, time and place of such hearing. A brief description of the proposed standard, regulation or order shall be contained therein.

(b) Section 11(1)(a) notwithstanding, notice shall not be required prior to the adoption of federal standards which have been received by the Department of Labor after general notice of the board meeting has been published.

(2) (a) Any interested person including an employer, employee, or representative of the employees may petition in writing to the Commissioner of the Department of Labor to promulgate, modify, or revoke a standard. The petition should set forth the terms or the substance of the rules desired, the effects thereof if promulgated, and the reason thereof.

(b) Within a reasonable time after the receipt of a submission pursuant to subsection (2)(a) of this section, the commissioner shall notify the Kentucky Occupational Safety and Health Standards Board and the board may afford an opportunity for a hearing.

(3) Hearings by the board shall be conducted in accordance with the following rules and procedures:

(a) These rules and procedures may be suspended or modified when deemed necessary.

(b) The "presiding officer" shall be the chairman of the board or *the chairman pro-tem. A chairman pro-tem shall be elected whose duties shall be to chair any meeting of the board in the absence of the chairman. The chairman pro-tem shall be a member of the board and shall not lose the right to vote while acting as chairman. The chairman pro-tem shall be elected by the members of the board by a majority vote. The chairman pro-tem shall be elected for a term of two (2) years or until his successor is elected. In the event the chairman pro-tem ceases to be a member of the board prior to the expiration of his term as chairman pro-tem, a new chairman pro-tem shall be elected by the board at the next board meeting. In the event both the chairman and the chairman pro-tem are absent at the same meeting, a temporary chairman pro-tem shall be elected for the purpose of chairing that particular meeting only* [a person designated by him].

(c) Any interested person may appear at the hearing to offer evidence either on his behalf or the behalf of any other person; provided, that at the opening of such hearing, or at an earlier time as the presiding officer shall by appropriate notice direct, such person shall file with the presiding officer a notice of his appearance which shall set forth:

1. Name and address of person appearing;
2. Name and address of person represented, if any; and
3. Approximate length of time represented for presentation.

(d) In order to maintain orderly and expeditious procedure, each person filing a notice of appearance will be notified, if practicable, of the approximate day and the place at which he may offer evidence before the hearing. If such person does not appear at the time set in the notice, he will not be permitted to offer evidence at any time except by special permission of the presiding officer.

(e) At the discretion of the presiding officer, the hearing may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the presiding officer, or by other appropriate notice.

(f) All evidence must be presented under oath or affirmation, which shall be administered by the presiding officer.

(g) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the chairman and having power to administer oaths.

(h) Any party desiring to take the deposition of a witness may make application in writing to the chairman setting forth:

1. The reasons why such depositions should be taken;
2. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

3. The name and address of each witness; and
4. The subject matter concerning which each witness is expected to testify.

(i) Such notice as the chairman may order shall be given by the party taking the deposition to every other party.

(j) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the chairman. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance existed at the time of the hearing.

(k) Whenever appropriate to a just disposition of any issue in a hearing, the chairman may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment involved.

(l) The hearing shall be stenographically reported and a transcript made which will be available to any person by prescribed rates upon request made to the official reporter.

(m) Written documents or exhibits, except as otherwise permitted by the presiding officer, must be offered in evidence by a person who is prepared to testify as to the authenticity and trustworthiness thereof, and who shall, at the time of offering the documentary exhibits, make a brief statement as to the contents and manner of preparation thereof.

(n) Written documents and exhibits shall be tendered in duplicate and the persons preparing the same shall be prepared to supply additional copies if such are ordered by the presiding officer. Where evidence is embraced in a document containing matter not intended to be put in evidence, such document will not be received, but the person offering the same may present to the presiding officer the original document together with two (2) copies of those portions of the documents intended to be put in evidence. Upon presentation of such copies in proper form, the copies will be received in evidence.

(o) Subpoenas requiring the attendance of witnesses or the presentation of documents at any designated place of hearing may be issued by the presiding officer at his discretion, and any person appearing in the proceeding may apply in writing for the issuance by the presiding officer of the subpoena. Such application shall be timely and shall identify exactly the witness or document and state fully the nature of the evidence proposed to be secured.

(p) Witnesses summoned by the presiding officer shall be paid the same fee and mileage as are paid witnesses in the courts of the Commonwealth of Kentucky. Witness fees and mileage shall be paid by the party at whose instance witnesses appear, and the presiding officer before issuing a subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

(q) The rules of evidence prevailing in courts of law or equity shall not be controlling.

(r) The presiding officer may, at his discretion, permit any person appearing in the proceeding to cross-examine any witness offered by another person insofar as is practicable, and to object to the admission or exclusion of evidence by the presiding officer. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or objection. Such requests or objections shall become a part of the record, but the record shall not include argument thereon except as ordered by the presiding officer.

Section 12. (1) The chairman shall have the power to appoint standing and special committees.

(2) A committee shall meet at the call of its chairman or the chairman of the board at the time and place designated by the person making such call.

Section 13. Any rule, regulation or standard promulgated, modified or revoked under these rules may contain a provision delaying its effective date for such period (not in excess of ninety (90) days) as the board determines may be necessary to ensure that affected employees and employers will be informed of the existence, modification or revocation of the rule, regulation or standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule, regulation or standard.

Section 14. Any interested person may at any time petition the board in writing to revise, amend, or revoke any provision of these rules. The petition shall set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

JOHN CALHOUN WELLS, Commissioner
ADOPTED: April 22, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 5, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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

Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

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

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

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

(a) "Act" means KRS Chapter 338.

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

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

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

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

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

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

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

(3) 29 CFR 1910.20 "Access to employee exposure and medical records" is amended as follows:

(a) 29 CFR 1910.20(e)(1)(i) is amended to read "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not later than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(b) 29 CFR 1910.20(e)(1)(ii) is amended to read "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

(c) 29 CFR 1910.20(e)(1)(v) is added and shall read "Original x-ray film will be made available to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."

(d) 29 CFR 1910.20(e)(3)(ii) shall read "Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days. OSHA will have access to employee medical records maintained by an employee's personal physician fifteen (15) days after written consent is given to OSHA by the affected employee. The consent must contain a general description of the medical information that is authorized to be released."

(e) 29 CFR 1910.20(g)(1) is amended to read "Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform each employee exposed to toxic substances or harmful physical agents of the following:"

(f) 29 CFR 1910.20(g)(2) is amended to read "Each employer shall make readily available to employees a copy of this standard and its appendices, and shall make readily available to employees any informational materials concerning this standard which are provided to the employer by the Assistant Secretary of Labor for Occupational Safety and Health."

(4) Subparagraph 29 CFR 1910.23(a)(7) shall be amended to read as follows: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

(5) 29 CFR 1910.95 "Hearing Conservation Program" paragraph (c) through (s) and appendices A, C, D, E, G, H, and I as published in the Federal Register, Volume 46, Number 162, August 21, 1981 and the "Correction to Appendix A" as published in the Federal Register, Volume 46, Number 176, September 11, 1981 are adopted by reference and amended as follows:

(a) 29 CFR 1910.95(j)(3) shall read: "Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other qualified physician, or by a technician who is certified by the Council of Accreditation in Occupational Hearing Conservation, or who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining, and checking the calibration and functional operation of audiometers. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or qualified physician."

(b) 29 CFR 1910.95(k)(1) shall read: "Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies including as a minimum 500, 1000, 2000, 3000, 4000 and 6000 Hz. Testing at 8000 Hz must be included in the audiometric test within three (3) years of the effective date of this standard. Tests at each frequency shall be taken separately for each ear."

(c) 29 CFR 1910.95(o)(1) shall read: "The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace."

(d) 29 CFR 1910.95(s)(1) shall read: "Paragraphs (c) through (r) of this section shall become effective January 15, 1982 unless otherwise noted below."

(e) 29 CFR 1910.95(s)(2) shall read: "Monitoring conducted pursuant to paragraph (e) of this section shall be completed by July 15, 1982."

(f) 29 CFR 1910.95(s)(3) shall read: "Baseline audiograms required by paragraphs (j) of this section shall be completed by January 15, 1983."

(6) 29 CFR 1910.101(b) shall be amended by revocation of referenced pamphlet P-1-1965 and the adoption of P-1-

1974, herein filed by reference.

(7) 29 CFR 1910.106(a)(3) shall read as follows:

"The term automotive service station, or service station, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(8) 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2—1980."

(b) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1—1973."

(c) 29 CFR 1910.134(g) shall read: Identification of Air-Purifying Respirator Canisters and Cartridges.

1. The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

2. All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

3. On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

*CANISTER FOR*_____
(Name of atmospheric contaminant)
or
*CARTRIDGE FOR*_____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs a and b of this paragraph, and subparagraph c of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

a.

For respiratory protection in atmospheres containing not more than _____ *by volume of*
(Concentration)

_____
(Name of atmospheric contaminant)

b.

For respiratory protection in atmospheres containing

_____
(Type of particulate contaminant)

c.

Do not use in atmospheres containing less than 19.5% oxygen by volume at sea level.

4. Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(d) 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to be Protected Against	*Color Assigned*	*ISCC-NBS Centroid Color Number*	*ISCC-NBS Centroid Color Name*
Acid gases	*White*	*263*	*White*
Organic vapors	*Black*	*267*	*Black*
Ammonia gas	*Green*	*139*	*Vivid green*
Carbon monoxide gas	*Blue*	*178*	*Strong blue*
Acid gases and organic vapors	*Yellow*	*82*	*Vivid yellow*
Acid gases, ammonia, and organic vapors	*Brown*	*75*	*Deep yellow brown*
Acid gases, ammonia, carbon monoxide, and organic vapors	*Red*	*11*	*Vivid red*
Other vapors and gases not listed above	*Olive*	*106*	*Light olive*
Radioactive materials (except tritium and noble gases)	*Purple*	*218*	*Strong purple*
Dusts, fumes, and mists (other than radioactive materials)	*Orange*	*48*	*Vivid orange*

NOTES:

(1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

(2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

(3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

(4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(9) [(8)] 29 CFR 1910.141(c)(2)(i) shall read as follows:

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

(10) [(9)] 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

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

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

"(c) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured

employees, have a person or persons adequately trained to render first aid. First-aid supplies approved by the consulting physician shall be readily available."

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

(11) [(10)] 1910.156(a)(2) "Application" is amended to read "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply only to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."

(12) [(11)] 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

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

(13) [(12)] Subparagraph 29 CFR 1910.252(a)(6)(iv), (d)(2) shall be corrected to read as follows:

"Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of section 1910.309(a) for Class I, Division 2 locations."

(14) [(13)] Corrections to 29 CFR 1910 Subpart S "Electrical" as published in the Federal Register, Volume 46, Number 152, August 7, 1981 are adopted by reference.

(15) 29 CFR 1910.1001(d)(2)(iv)(a) is amended to read:

"The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2—1980, which in incorporated by reference herein."

(16) [(14)] 29 CFR 1910.1005 4,4'-methylene bis (2-chloroaniline) and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), Laboratory Activities, printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

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

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

(18) [(16)] 29 CFR 1910.1025 "Occupational Exposure to Lead" shall be amended as follows:

(a) Revisions as published in the Federal Register, Volume 46, Number 238, Friday, December 11, 1981, are adopted by reference.

(b) "Table 1—Implementation Schedule" is amended to read:

TABLE 1—Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Primary lead production	(2)	6-29-84	6-29-91
Secondary lead production	(2)	6-29-84	6-29-86
Lead acid battery manufacture	(2)	6-29-83	6-29-86
Automobile manufacture/ solder grinding	(2)	N/A	6-29-88
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wallpaper manufacture, can manufacture, and printing	(2)	N/A	6-29-82
Lead pigment manufacture, non-ferrous foundries, leaded steel manufacture, lead chemical manufacture, ship building and ship repair, battery breaking in the collection and processing of scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), secondary smelting of copper, and lead casting	(2)	N/A	N/A
All other industries	(2)	N/A	6-11-84

[1]Includes ancillary activities located on the same worksite.

(2) On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

JOHN CALHOUN WELLS, Commissioner
ADOPTED: April 22, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 5, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

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

803 KAR 2:027. Adoption of 29 CFR Parts 1915 to 1919, maritime employment.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and stan-

dards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the Board. The following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby adopts *Chapter* 29, *Parts* [CFR] 1915, 1916, 1917, 1918, and 1919 *of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration* [, the Occupational Safety and Health Standards for Maritime employment, published by the Commerce Clearing House, Inc., Chicago, Illinois 60646, in the September 1977 edition, copyright date 1977]. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR 1915.1, 1916.1, 1917.1, 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR 1915.2(b), 1916.2(b), 1917.2(b), and 1918.2(b) "Secretary" is changed to read: "Commissioner" means the Commissioner of Labor, Kentucky Department of Labor, Commonwealth of Kentucky, or his authorized representative.

(3) 29 CFR 1919.2(d) "Assistant Secretary" is changed to read: "Commissioner" means the Commissioner of Labor, Kentucky Department of Labor, Commonwealth of Kentucky, or his authorized representative.

(4) 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(5) An employer, required under 29 CFR 1915, 1916, 1917, 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601.

JOHN CALHOUN WELLS, Commissioner
ADOPTED: April 22, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 5, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

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

803 KAR 2:030. Adoption of 29 CFR Part 1926.

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

Section 1. The Occupational Safety and Health Standards Board hereby adopts *Chapter* 29, [CFR] Part 1926 [,] *of the Code of Federal Regulations, revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration* [the Occupational Safety and Health Standards for the Construction Industry, published by the Commerce Clearing House, Inc., Chicago, Illinois 60646, in the March 1979 Edition, Copyright Date 1979]. These standards are hereby adopted by reference with the following additions, exceptions, and deletions:

(1) 29 CFR Part 1926.1 shall read as follows:

The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1926 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR 1926.103 "Respiratory Protection" Table E-4 is amended as follows:

Table E-4
Respirator Protection Factors[a]

Type of Respirator	Permitted for Use in Oxygen-Deficient Atmosphere	Permitted for Use in Immediately-Dangerous-to-Life-or-Health Atmosphere[f]	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Particulate-filter, quarter-mask or half-mask facepiece[b,c]	No	No	10	As measured on each person with maximum of 100.
Vapor- or gas-removing, quarter-mask or half-mask facepiece[c]	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less.
Combination particulate-filter and vapor- or gas-removing, quarter-mask or half-mask facepiece[b,c]	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less
Particulate-filter, full facepiece[b]	No	No	100	As measured on each person with maximum of 100 if dust, fume, or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas-removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less.
Combination particulate-filter and vapor- or gas-removing, full facepiece[b]	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume, or mist filter is used and maximum of 1000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less.
Powered particulate-filter, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.
Powered vapor- or gas-removing, any respiratory-inlet covering[c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A No tests are required due to positive pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less.

Table E-4 (Continued)
Respirator Protection Factors[a]

Type of Respirator	Permitted for Use in Oxygen-Deficient Atmosphere	Permitted for Use in Immediately-Dangerous-to-Life-or-Health Atmosphere[f]	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Powered combination particulate-filter and vapor- or gas, removing, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less.	
Air-line, demand, quarter-mask or half-mask facepiece, with or without escape provisions[c,e]	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Air-line, demand, full facepiece, with or without escape provisions[c]	Yes[f]	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Air-line, continuous-flow or pressure-demand type, any facepiece, without escape provisions[c]	Yes[f]	No	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.	
Air-line, continuous-flow or pressure-demand type, any facepiece, with escape provisions[c,e]	Yes[g]	Yes	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus[h].	
Air-line, continuous-flow, helmet, hood, or suit without escape provisions	Yes[f]	No	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.	
Air-line, continuous-flow, helmet, hood, or suit, with escape provisions[e]	Yes[g]	Yes	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus[h].	

Table E-4 (Continued)
Respirator Protection Factors[a]

Type of Respirator	*Permitted for Use in Oxygen-Deficient Atmosphere*	*Permitted for Use in Immediately-Dangerous-to-Life-or-Health Atmosphere*[f]	*Respirator Protection Factor*	
			Qualitative Test	*Quantitative Test*
Hose mask, with or without blower, full facepiece	*Yes*[f]	*No*	*10*	*As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.*
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask facepiece[c]	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full facepiece or mouthpiece/nose clamp[c]	Yes[f] (Yes[g], if respirator is used for mine rescue and mine recovery operations.)	No (yes, if respirator is used for mine rescue and mine recovery operations.)	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values, except when the respirator is used for mine rescue and mine recovery operations.
Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece or mouthpiece/nose clamp[c]	Yes[g]	Yes	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus[h].	
Combination respirators not listed.	The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.			

N/A means not applicable since a respirator-fitting test is not carried out.

[a] *A respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.*

[b] *When the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).*

[c] *If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouthpiecce and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.*

[d] *If the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.*

[e] *The escape provision shall be an auxiliary self-contained supply of respirable air.*

[f] *"Oxygen deficiency—not immediately dangerous to life or health"—an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.*

[g] *"Oxygen deficiency—immediately dangerous to life or health"—an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.*

[h] *The protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.*

[i] *The service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the contration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.*

[j] *Vapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.*

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory-inlet covering are not given, since such respirators are approved only for escape purposes.

(3) [(2)] 29 CFR 1926.200(g)(2), .201(a)(2) and .202 shall be amended to require signs, signaling and barricades to conform to specifications as set forth in ANSI D6.1 "Manual of Uniform Traffic Control Devices for Streets and Highways" (1978 Edition).

(4) [(3)] 29 CFR 1926.400(h)(3)(i), (vii) shall read: "shall be readily available for inspection."

(5) [(4)] 29 CFR 1926.451(a)(4) shall read as follows: Guardrails and toeboards shall be installed on all open sides and ends of platforms more than ten (10) feet above the ground or floor, except needle beam scaffolds and floats (see paragraphs (p) and (w) of this section). Toeboards shall not be required on the loading side of platforms which are loaded by means of a high lift tractor or fork truck provided that employees are prohibited from entering the area beneath the scaffolding where they could be exposed to objects which might fall from the scaffolding. Scaffolds four (4) to ten (10) feet in height, having a minimum horizontal dimension in either direction of less than forty-five (45) inches, shall have standard guardrails installed on all open sides and ends of the platform.

[(5) Revisions to 29 CFR 1926.500 "Guardrails, handrails and covers," .502 "Definitions applicable to this subpart," and Appendix A to Subpart M as published in the Federal Register, Volume 45, Number 222, Friday, November 14, 1980, are adopted by reference.]

(6) 29 CFR 1926.552(b)(8) of the paragraph on "Material hoists" shall read as follows: All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the nominal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope.

(7) Revoke paragraph "514—Warning Device" of ANSI B56.1—1969—Safety Standards for Powered Industrial Trucks and adopt paragraph "512—Warning Device" of ANSI B56.1—1975—Low Lift and High Lift Trucks for standard reference as specified in 29 CFR 1926.602(c)(1)(vi): effective July 1, 1979.

(8) The following paragraphs of 29 CFR 1926, Subpart

U, Blasting and the Use of Explosives, which were previously adopted by reference, are hereby revised and shall read as follows:

(a) 1926.900(k)(3)(i) The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Commissioner, Kentucky Department of Labor.

(b) 1926.900(k)(4) Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be de-energized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.

(c) 1926.900(p) The use of black powder shall be prohibited except when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(d) 1926.900(r) All electric blasts shall be fired with an electric blasting machine or properly designed electric power source, and in accordance with the provisions of subsection .906(a) and (r).

(e) 1926.902(d) Explosives or blasting agents shall be transported in separate vehicles unless the detonators are packaged in specified containers and transported all in compliance with DOT Regulation 49 CFR 177.835(g).

(f) 1926.903(o) Deleted.

(g) 1926.905(h) Machines and all tools not used for loading explosives into the boreholes shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within fifty (50) feet of a loaded hole except that which is required when the containment of the blast is necessary to prevent flyrock. When equipment or machinery is used to place mats, over-burden, or protective material on the shot area, a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) shall implement adequate precautions to protect the leadwires or initiating systems such as protecting the components from direct contact with materials which sever, damage, impact, or conduct stray currents to the explosives system. This would include preventing the dragging of blasting mats or running over the holes and systems with the equipment used.

(h) 1926.905(i) No activity of any nature other than that which is required for loading holes with explosives and preparation required for initiating the blast and containment of flyrock from the blast shall be permitted in a blast area.

(i) 1926.905(k) Holes shall be inspected prior to loading to determine depth and conditions. When necessary to drill a hole in proximity to a charged or misfired hole, the distance between these two holes must be greater than the depth being drilled and precautions taken to ensure the integrity of any adjacent-charged hole or misfired hole. This distance must be determined by a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) in order to insure that there is no danger of intersecting the charged or misfired hole.

(j) 1926.905(n) In blasting, explosives in Fume Class I, as set forth by the Institute of the Makers of Explosives, shall be used; however, Fume Class I explosives are not required when adequate ventilation is provided and the workings are abandoned for a period of time sufficient to allow dissipation of all fumes.

(k) 1926.906(p) The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine except under the immediate physical and visual supervision of the blaster.

(l) 1926.906(q) Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose or an instrument designed solely for use in blasting, which incorporates a current-limiting device into its circuitry. No instrument capable of producing over fifty (50) milliamps on direct short circuit shall be used.

(m) 1926.906(s) Leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

(n) 1926.907(a) The use of a fuse that has been hammered or injured in any way shall be forbidden.

(o) 1926.910(b) Sufficient time shall be allowed, not less than fifteen (15) minutes in tunnels, for the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation. In tunnels, the airborne concentration of toxic dusts and fumes will be maintained at healthful levels by compliance with 29 CFR 1926.800, or by wetting down the muck pile, or by other effective means.

(9) Amend subparagraph 1926.950(c)(1)(i) to read as follows:

"The employee is insulated or guarded from the energized part. Insulating gloves, as well as insulating sleeves when necessary, rated for the voltage involved shall be considered insulation of the employee from the energized part, or . . . ."

JOHN CALHOUN WELLS, Commissioner
ADOPTED: April 22, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 5, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

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

803 KAR 2:032. Adoption of 29 CFR Part 1928.

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

Section 1. The Occupational Safety and Health Standards Board hereby adopts *Chapter* 29, [CFR] Part 1928 [,] *of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration* [the Occupational Safety and Health Standards, published in the Federal Register April 25, 1975 Edition, Volume 40, Number 81, Government Printing Office, Washington, D. C. 20402]. These standards are hereby adopted by reference with the following additions, exceptions and deletions.

[(1)] 29 CFR Part 1928.1 shall read as follows:

"This part contains Occupational Safety and Health Standards applicable to agriculture operations. The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1928 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

[(2) The additions which have been adopted by the U.S. Department of Labor, relating to Agricultural Standards, which are contained in 29 CFR 1928.57, Subpart D—Safety for Agricultural Equipment, published in the Federal Register, Volume 41, No. 47, Tuesday, March 9, 1976, and Volume 41, No. 109, Friday, June 4, 1976, copies of which are attached hereto, are hereby adopted by reference.]

[(3) Amendments which have been adopted by the U.S. Department of Labor by making several nonsubstantive editorial changes in 29 CFR Paragraph 1928.57, published in the Federal Register, Volume 41, No. 206, Friday, October 22, 1976, copies of which are attached hereto, are hereby adopted by reference.]

[(4) 29 CFR 1928.21 is hereby amended by revising Paragraph (b) as follows: Except to the extent specified in Paragraph (a) of this section, the standards contained in Subparts B through T and Subpart Z of 29 CFR 1910, as adopted by 803 KAR 2:020, do not apply to agriculture operations.]

JOHN CALHOUN WELLS, Commissioner
ADOPTED: April 22, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 5, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
(Proposed Amendment)

808 KAR 10:150. Registration exemptions.

RELATES TO: KRS 292.410(1)
PURSUANT TO: KRS 13.082, 292.500(3)
NECESSITY AND FUNCTION: To declare that registration is not necessary in the public interest for certain types of business transactions with limited securities implications pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292.410(1)(q), the director having found that the enforcement of the Kentucky Securities Act is not necessary or appropriate in the public interest or for the protection of investors, and securities issued under the following classes of transactions shall be exempt from KRS 292.340 to 292.390 and need not file to claim the exemption. However, any persons receiving commissions or other remuneration in connection with sales made pursuant to these exemptions must comply with the registration requirements of KRS 292.330.

(1) Small business organization. Where ten (10) or fewer persons organize a corporation, joint venture, or similar business organization other than a limited partnership, provided that:

(a) There are no more than twenty-five (25) offerees;

(b) The security acquired does not evidence an oil, gas or mineral interest;

(c) Each person purchases with investment intent;

(d) Each purchaser is an organizer on the date the issuer is formed;

(e) Each purchaser has access to information concerning the issuer;

(f) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in this state;

(g) No public advertising through newspapers, television, radio, handbills, or other such solicitation will be employed in effectuating the proposed transaction.

(2) Professional service corporation. Any security issued by a professional service corporation organized under KRS Chapter 274, provided:

(a) The professional service corporation complies with the ownership and retransfer restrictions set forth in KRS Chapter 274;

(b) The securities are sold to a professional person;

(c) The seller must reasonably believe that each buyer is purchasing for investment; and

(d) Each professional is provided access to information concerning the professional service corporation.

(3) Limited offering of securities related to oil, gas and mineral interests to select persons under select conditions. Any offer or sale of a certificate of interest or participation in an oil, gas or mineral title, lease or assignment, or in payments out of production under such title, lease or assignment, provided each such sale complies with each of the following:

(a) The number of investors cannot exceed thirty-five (35);

(b) Offers and sales can only be made to the following types of investors:

1. A professional geologist, professional oil, gas or mineral landman, geophysicist, petroleum engineer or mining engineer;

2. A person who is regularly engaged in the business of production of or exploration for oil, gas or minerals as a full-time vocation or for his primary source of income;

3. A sophisticated investor who the issuer and any person acting on its behalf in the offer, offer to sell, offer for sale or

sale of the securities shall have reasonable grounds to believe and shall believe:

a. Immediately prior to making any offer, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;

b. Immediately prior to making any sale, after reasonable inquiry, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;

c. That each investor has a minimum net worth of $100,000 exclusive of home, home furnishings and automobiles, and in addition, is able to bear the economic risk of the investment (for purposes of determining the ability to bear the economic risk, the relationship between the investor's net worth and the amount of the investment shall be a substantial factor); and

d. That each purchaser has access to information concerning the issuer.

(c) The offeror must reasonably believe that each purchaser is purchasing for investment and not with a view for resale and each investor must represent in writing that he understands he cannot resell his security without registration or other compliance with the state and federal securities laws; provided, however, solely for purposes of those investors described in paragraphs (b)1 and (b)2 of this subsection, sales may be made exclusively among those persons described in paragraphs (b)1 and (b)2 of this subsection for purposes of assembling lease or other rights for oil, gas or mineral production or exploration, and resales of their whole interests may be made exclusively among those persons described in paragraphs (b)1 and (b)2 of this subsection without regard to a holding period requirement.

(d) Resales by persons described in paragraph (b)3 of this subsection within two (2) years of their purchase of any such security can only be made to persons described in paragraphs (b)1 and (b)2 of this subsection; such resales must be of their whole interests and not fractional interests in the securities.

(e) Sales by persons described in paragraph (b)3 of this subsection of their whole interests back to the issuer shall not be considered to be "resales" for purposes of this regulation.

(f) This exemption shall not be available to any issuer, if it, any officer, director, promoter, sponsor, operator, organizer or agent of such issuer or other authorized person participating in the process of offering or selling such securities shall have been the subject of:

1. Any administrative order issued under any state or federal securities law or regulation or a postal fraud order;

2. Any outstanding injunction, consent order or other legal directive for a securities violation of any state or federal securities law or regulation; or

3. Any court decision granting civil relief for a securities violation of any state or federal securities law or regulation; or shall have been convicted of any criminal violation of the federal securities or postal laws or regulation, the securities laws of any state, or criminal fraud or any felony.

(g) The entire exemption shall not be available upon the occurrence of any one of the following events:

1. Where a single sale is made to a person who is not qualified as an investor under paragraph (b) of this subsection;

2. Where a single offer is made to randomly selected offerees who do not qualify as an offeree under paragraph (b) of this subsection; or

3. Where there has been a willful violation of KRS 292.320.

[(4)Private offering of securities under Rule 146 of the Federal Securities Act of 1933. Any offer or sale of securities pursuant to Rule 146 of the Federal Securities Act of 1933, provided each such offer or sale complies with all the requirements of said Rule, and provided further that any forms filed with the United States Securities and Exchange Commission pursuant to such an offering are filed concurrently with the Kentucky Division of Securities.]

Section 2. Pursuant to KRS 292.410(1)(q), the director having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following transaction is determined to be exempt from the registration provisions of KRS 292.340 through KRS 292.390.

(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501-230.503 and either 230.505 or 230.506 as made effective in Release No. 33-6389 and which satisfies the following further conditions and limitations:

(a) No commission, finders fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting any prospective purchaser or in connection with sales of securities in reliance on this regulation, unless to a person appropriately registered in this state insofar as required under KRS 292.330.

(b) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or interest described in Securities Act of 1933, Regulation A, Rule 230.252, Sections (c), (d), (e) or (f):

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within five (5) years prior to the commencement of the offering.

2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption.

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

6. The prohibitions of subparagraphs 1 through 3 of this paragraph shall not apply if the party or interest subject to the disqualifying order is duly licensed to conduct securities related business in the state in which the ad-

ministrative order or judgment was entered against such party or interest.

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(c) The issuer shall file with the Division of Securities a notice on Form D (17CFR239.550):

1. No later than fifteen (15) days after the first sale of securities to an investor in this state which results from an offer being made in reliance upon this exemption.

2. No later than thirty (30) days after the completion date of the offering of the issue.

3. Every six (6) months after the first sale of securities from the issue made in reliance on this regulation unless the final notice required by subparagraph 2 of this paragraph has been filed.

4. Every notice on Form D shall be manually signed by a person duly authorized by the issuer.

5. Any information furnished by the issuer to offerees shall be filed with the notice required pursuant to subparagaph 1 of this paragraph and, if such information is altered in any way during the course of the offering, the Division of Securities should be notified of such amendment within fifteen (15) days after an offer using such amended information.

6. If more than one (1) notice is required to be filed pursuant to subparagaphs 1 through 3 of this paragraph, notices other than the original notice need only report the information required by Part C and any material change in the facts from those set forth in Parts A and B of the original notice.

(d) In all sales to nonaccredited investors the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both of the following conditions are satisfied:

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed twenty (20) percent of the investor's net worth (excluding principal residence, furnishings therein and personal automobiles) it is suitable.

2. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risk of the prospective investment.

(2) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of this state's securities law.

(3) Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason, the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(4) In any proceeding involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(5) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

TRACY FARMER, Secretary
ADOPTED: May 10, 1982
RECEIVED BY LRC: May 14, 1982 at 11:25 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

902 KAR 3:010. Licensing procedures.

RELATES TO: KRS 222.210 to 222.230
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: Licensure or approval as applicable is required from the Department for Human Resources for organized programs offering or providing alcohol emergency care, alcohol intermediate care, alcohol outpatient care, outreach, aftercare, and consultation and education, related to treatment for persons who have problems associated with alcohol.

Section 1. Licensing and Approval Procedures. Applications for approval and licensing shall be obtained from and submitted to the Department for Human Resources, Frankfort, Kentucky 40601.

(1) Applications for approval shall be obtained by a department, agency, or institution of the Commonwealth or any political subdivision thereof. Application for licensure shall be filed by all alcohol treatment programs with the following exceptions:

(a) Group meetings organized among alcoholics, recovering alcoholics or alcohol abusers, held on a nonresidential basis and without professional staff intervention, for the purpose of discussing problems related to use of alcohol where no fee is involved.

(b) Programs addressed solely to the public problems of drinking and driving where such programs are conducted independently of other programs subject to regulation.

(c) Programs conducted in a facility established and maintained by a licensed hospital, department, agency or institution of the federal government or the Commonwealth or of any political subdivision thereof.

(2) The department shall notify the applicant alcoholism program of any licensure action taken, and shall provide written reports containing recommendations for correction of observed deficiencies as they relate to the standards. Copies of these reports shall be forwarded to the head of the governing body, chief executive officer, and if applicable, the head of the organized medical or professional staff.

(3) Licensure is not transferable. Both the license holder and the new operator shall be responsible to notify the department when a licensed alcoholism program changes ownership or control or undergoes a major change in its capacity or in the category(ies) of services offered, with

disclosure of all factors involved in the change. If it is the decision of the department that a reapplication is in order the applicant shall apply within twenty (20) days of notification by the department. Failure to comply with these provisions shall result in loss of license.

(4) The department shall be notified in writing prior to the merger of a licensed alcoholism program with another program and an immediate request for licensure be filed with the department. The merged alcoholism program shall be surveyed within one (1) year of such notification. For the purposes of licensure, a merged alcoholism program is one with a single governing body, a single administration, a single staff, and, where applicable, a single set of bylaws, rules and regulations.

(5) (a) A certificate of licensure shall be provided to an alcoholism program that is granted a license. The certificate shall specify all the service components and additional categories of service provided by the alcoholism program surveyed, and the year in which license is granted.

(b) An alcoholism program may be provided additional certificates upon payment of the cost of reproduction. The certificate and all copies shall remain the property of the department and must be returned to the department if the alcoholism program is issued a new certificate reflecting a change in name or services for which it is licensed, or if it loses its license for any cause.

(6) The department will periodically publish and distribute lists of licensed alcoholism programs.

(7) Approval to any department, agency, or institution of the Commonwealth or any political subdivision thereof shall be granted for a period not exceeding two (2) years and renewable for a like period, and subject to revocation for cause.

(8) Licenses to other programs shall be required and granted to individual non-government applications deemed responsible and suitable to carry out alcohol programs meeting applicable standards and requirements for a period not exceeding two (2) years and renewable for a like period, and subject to revocation for cause.

(9) Conditional, temporary, or limited licenses and approvals may be granted at the discretion of the secretary where extenuating circumstances justify.

(10) Two (2) types of licenses shall be issued:

(a) A comprehensive license shall be issued to a program which directly provides outpatient, outreach, aftercare, consultation and education services, plus, by either direct or through an affiliation agreement, emergency, and intermediate services. There shall be adequate documentation of this affiliation agreement.

(b) Unit license. An independent program that meets the requirements of individual components of service, such as emergency, intermediate, outpatient, outreach, aftercare, consultation and education. A program qualifying for a unit license may or may not affiliate with the comprehensive service.

(11) *Licensure fees shall be paid annually, twenty-five dollars ($25) per unit up to a maximum of $100.* [There shall be an appropriate fee schedule for licensure.]

(12) Hearing procedures involving licenses shall be conducted in accordance with KRS 222.230(6).

DAVID T. ALLEN, Commissioner
ADOPTED: April 22, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 26, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 5:030. Employer contributions.

RELATES TO: KRS 341.260
PURSUANT TO: KRS 13.082, 194.050, 341.115
NECESSITY AND FUNCTION: This regulation sets the due date upon which employer contributions are payable to the division.

Section 1. *Except as provided by Section 7 of this regulation,* contributions shall become due on or before the last day of the month following the close of the calendar quarter for which they are payable.

Section 2. The first contribution payment of any employing unit which becomes a subject employer at any time during a calendar quarter, shall become due on or before the last day of the month following the close of the quarter in which such employing unit became a subject employer, and shall include contributions which have accrued for the entire period beginning January 1 of the calendar year and including the calendar quarter in which the employing unit became a subject employer.

Section 3. Contributions required under KRS 341.290 shall become payable on the basis of calendar years. Such contributions shall become due on February 28, of the year following the year for which they are payable.

Section 4. Notwithstanding the provisions of Sections 1, 2, [and] 3 *and 7* of this regulation, in the event a subject employer has erroneously paid to another state or to a federal agency contributions due under KRS Chapter 341, the due date of such contributions shall be extended by the number of calendar days between the date such contributions were erroneously paid to such other agency and the date the secretary determines such contributions were payable under KRS Chapter 341; provided, however, if such contributions have been refunded by such other agency to such subject employer prior to the date of the secretary's determination, the due date shall be extended only for the number of calendar days between the date of such erroneous payment and the date of such refund.

Section 5. *Except as provided by Section 7 of this regulation,* contributions shall not be considered paid until the required contribution and wage reports have been received by the Division for Unemployment Insurance or which have been deposited in the mail on or before the due date as indicated by the postmark thereon.

Section 6. For the purpose of this regulation, when the due date falls on a day during which the office of the division is closed, the next day thereafter on which such office is open shall be considered the due date and contributions and reports which have been deposited in the mail on or before the due date, as indicated by the postmark thereon, shall be considered as timely filed.

Section 7. Contributions and reports for the first quarter of 1982 shall become due as follows:

(1) Contributions in the amount which would have been due under former law before House Bill 746 of the 1982 General Assembly became effective shall become due on or before May 17, 1982.

(2) Contributions in the amount of the increase provided by House Bill 746 of the 1982 General Assembly shall become due on or before July 16, 1982.

(3) All contribution and wage reports shall become due on or before May 17, 1982, covering contributions mentioned in subsections (1) and (2) of this section.

JOHN CUBINE, Commissioner
ADOPTED: May 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: May 14, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

DEPARTMENT OF REVENUE

103 KAR 1:030. Repeal of 103 KAR 1:020.

RELATES TO: KRS 76.005 to 76.420, 107.600, 107.610
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation is repealed because House Bill 526 of the 1982 General Assembly repealed KRS 107.600, 107.610, and 107.620.

Section 1. 103 KAR 1:020, Wastewater revolving fund payments, is hereby repealed.

RONALD G. GEARY, Commissioner
ADOPTED: April 21, 1982
RECEIVED BY LRC: April 21, 1982 at 10:50 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex Building, Frankfort, Kentucky 40620.

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

405 KAR 1:005. 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
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 8:010, 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. Hearings. The hearing provisions of this chapter shall apply to the resolution of all notices and orders that were issued by the department prior to the date of primacy as defined in 405 KAR 7:020.

Section 7. 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 8. 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 8:010, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 3:005. 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

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 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 8:010, 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. Hearings. The hearing provisions of this chapter shall apply to the resolution of all notices and orders that were issued by the department prior to the date of primacy as defined in 405 KAR 7:020.

Section 7. 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 8. 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 8:010, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:020. Definitions and abbreviations.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 16:100, 405 KAR 16:060, Section 10, and 405 KAR 16:210; or 405 KAR 18:100, 405 KAR 18:060, Section 9, and 405 KAR 18:220.

(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 24:020, Sections 3 and 4 and 405 KAR 24:030, 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 and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(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 7:060, 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) Acquisition 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 8:010, 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.

(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 interest of the applicant.

(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 16:090 or 405 KAR 18:090 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 minesite. 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; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(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

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:030. 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
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. Applicability. Title 405, Chapter 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of SMCRA.

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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:040. 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
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 8:020, 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 16:010 or 405 KAR 18:010. 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 8:010.

(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 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 8:020.

(2) The coal exploration performance standards in 405 KAR 20:010 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 standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Such certification shall not be construed to constitute a warranty or guarantee.

(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 certification which is not made in such form.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:060. Experimental practices mining.

RELATES TO: KRS 350.020, 350.028, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 8:010, 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 7:090.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:080. Small operator assistance.

RELATES TO: KRS 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
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 pro-

bable 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 8:030, Section 12; General requirements for geology and hydrology.
2. 405 KAR 8:030, Section 13; Geology information.
3. 405 KAR 8:030, Section 14; Ground water information.
4. 405 KAR 8:030, Section 15; Surface water information.
5. 405 KAR 8:030, Section 16; Alternative water supply information.
6. 405 KAR 8:030, Section 32(3); Determination of probable hydrologic consequences of mining.

(b) Underground mines:

1. 405 KAR 8:040, Section 12; General requirements for geology and hydrology.
2. 405 KAR 8:040, Section 13; Geology information.
3. 405 KAR 8:040, Section 14; Ground water information.
4. 405 KAR 8:040, Section 15; Surface water information.
5. 405 KAR 8:040, Section 16; Alternate water supply information.
6. 405 KAR 8:040, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:090. 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
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 unless such hearing is waived by the person to whom the notice or order was issued. 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 fifteen (15) days of the mailing of the proposed penalty assessment, 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 written request filed within fifteen (15) days of the mailing of the proposed penalty assessment by the operator 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 12:020 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 12:020, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:095. Assessment of civil penalties.

RELATES TO: KRS 350.990(1)
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465, 350.990(1)
NECESSITY AND FUNCTION: KRS 350.990(1) directs the department to promulgate a regulation setting forth the method for calculating monetary penalties. This regulation establishes how and when penalties will be assessed and includes a point system for calculating penalties, rules for assessing continuing violations, and a provision allowing waiver of the point system.

Section 1. How Penalty Assessments are Made. The department shall review each violation, condition or practice cited in a notice of noncompliance and order for remedial measures or order of cessation and immediate compliance in accordance with the assessment procedures described in 405 KAR 7:090 and this regulation to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

Section 2. When Penalty Will be Assessed. (1) The department shall assess a penalty for each violation, condition or practice cited in an order of cessation and immediate compliance.

(2) The department shall assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures, if the violation is assigned thirty-one (31) points or more under the point system described in Section 3.

(3) The department may assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures if the violation is assigned thirty (30) points or less under the point system described in Section 3. In determining whether to assess a penalty, the department shall consider the factors listed in 405 KAR 7:090, Section 3(2).

Section 3. Point System for Penalties. The department shall use the point system described in this section to determine the amount of any penalty. Points shall be assigned as follows:

(1) History of previous violations. The department shall assign up to thirty (30) points based on the history of previous violations. One (1) point shall be assigned for each past violation cited in a notice of noncompliance and order for remedial measures. Five (5) points shall be assigned for each violation (but not a condition or practice) cited in an order of cessation and immediate compliance. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(a) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one (1) year.

(b) No violation for which the notice or order has been vacated shall be counted; and

(c) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The department shall assign up to thirty (30) points based on the seriousness of the violation, as follows:

(a) Probability of occurrence. The department shall assign up to fifteen (15) points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

1. No probability of occurrence; zero (0) points.
2. Insignificant probability of occurrence; one (1) to four (4) points.
3. Unlikely probability of occurrence; five (5) to nine (9) points.
4. Likely probability of occurrence; ten (10) to fourteen (14) points.
5. Occurred; fifteen (15) points.

(b) Extent of potential or actual damage. The department shall assign up to fifteen (15) points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

1. If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the department shall assign zero (0) to seven (7) points, depending on the duration and extent of the damage or impact.
2. If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the department shall assign eight (8) to fifteen (15) points, depending on the duration and extent of the damage or impact.

(c) Administrative requirements. In the case of a violation of an administrative requirement, such as a requirement to keep records, the department shall, in lieu of paragraphs (a) and (b) of this subsection, assign up to fifteen (15) points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence. The department shall assign up to twenty-five (25) points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omis-

sion. Points shall be assessed as follows:

(a) A violation, condition or practice which occurs through no negligence shall be assigned no penalty points for negligence. No negligence means an inadvertent violation, condition or practice which was unavoidable by the exercise of reasonable care.

(b) A violation, condition or practice which is caused by negligence shall be assigned twelve (12) points or less, depending on the degree of negligence. Negligence means the failure of a permittee to prevent the occurrence of the violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care.

(c) A violation, condition or practice which occurs through a greater degree of fault than negligence shall be assigned thirteen (13) to twenty-five (25) points, depending on the degree of fault. A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(4) Good faith in attempting to achieve compliance. The department shall subtract up to fifteen (15) points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation, condition or practice. Points shall be subtracted as follows:

(a) Rapid compliance. Six (6) to fifteen (15) points shall be subtracted from the total points if the person to whom the notice or order was issued took extraordinary measures to abate the violation, condition or practice in the shortest possible time and that abatement was achieved before the time set for abatement.

(b) Normal compliance. Zero (0) to five (5) points shall be subtracted from the total points if the person to whom the notice or order was issued abated the violation, condition or practice by the abatement date.

Section 4. Determination of Amount of Penalty. For each violation, condition, or practice cited in a notice or order, the department shall determine the amount of any civil penalty by converting the total number of points assigned under Section 3 to a dollar amount, according to the schedule in Appendix A of this regulation.

Section 5. Assessment of Separate Violations for Each Day. (1) The department may assess separately a civil penalty for each day from the date of issuance of the notice or order to the date of abatement of the violation. In determining whether to make such an assessment, the department shall consider the factors listed in 405 KAR 7:090, Section 3(2) and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two (2) or more days and which is assigned more than seventy (70) points under Section 3, the department shall assess a civil penalty for a minimum of two (2) separate days.

(2) Whenever a violation, condition or practice contained in a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance has not been abated within the abatement period set in the notice or order, a civil penalty of not less than $750 shall be assessed for each day during which such failure continues according to the provisions of 405 KAR 7:090, Section 10(2).

Section 6. Waiver of Use of Point System to Determine Civil Penalty. (1) The department upon its own initiative, or upon a written request by the person to whom the notice or order was issued that is received within fifteen (15) days of mailing of the proposed penalty assessment, may waive the use of the point system contained in Section 3 to set the civil penalty, if the department determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the department shall not waive the use of the point system or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate the violation, condition or practice. The basis for every waiver shall be fully explained and documented in the records of the case.

(2) If the department waives the use of the point system, it shall use the criteria set forth in 405 KAR 7:090, Section 3(2) to determine the appropriate penalty. When the department has elected to waive the use of the point system, it shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

APPENDIX A OF 405 KAR 7:095

Penalty Schedule

Points	Dollars	Points	Dollars
1	20	36	1,600
2	40	37	1,700
3	60	38	1,800
4	80	39	1,900
5	100	40	2,000
6	120	41	2,100
7	140	42	2,200
8	160	43	2,300
9	180	44	2,400
10	200	45	2,500
11	220	46	2,600
12	240	47	2,700
13	260	48	2,800
14	280	49	2,900
15	300	50	3,000
16	320	51	3,100
17	340	52	3,200
18	360	53	3,300
19	380	54	3,400
20	400	55	3,500
21	420	56	3,600
22	440	57	3,700
23	460	58	3,800
24	480	59	3,900
25	500	60	4,000
26	600	61	4,100
27	700	62	4,200
28	800	63	4,300
29	900	64	4,400
30	1,000	65	4,500
31	1,100	66	4,600
32	1,200	67	4,700
33	1,300	68	4,800
34	1,400	69	4,900
35	1,500	70 and above	5,000

JACKIE A. SWIGART, Secretary
ELMORE C. GRIM, Commissioner
ADOPTED: April 26, 1982
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:100. Notice of citizen suits.

RELATES TO: KRS 350.250
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.250, 350.465
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 7:110. Petitions for rulemaking.

RELATES TO: KRS 350.255
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.255, 350.465
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 hearing 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 8:010. 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

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 1:005 or 405 KAR 3:005 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 1:005 and 405 KAR 3:005:

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

(b) No interim program shall be issued under 405 KAR 1:005 or 405 KAR 3:005 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 1:005 or 405 KAR 3:005 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 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. 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 8:030, Section 23(1)(a) or 405 KAR 8:040, 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 7:040, 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.

(2) For applications submitted prior to July 15, 1982, 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. For applications submitted on or after July 15, 1982, the above amounts shall be increased to $375 and seventy-five dollars ($75) respectively.

(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 publication 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 con-

ferences 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 7:090 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 24:040 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 ten (10) 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. If the application is determined to be incomplete, the department 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.

(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 8:030, Section 3(3) or 405 KAR 8:040, 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 7:090. Such hearing shall be conducted pursuant to 405 KAR 7:090.

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 24:030; 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 24:030, 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 24:040, 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 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, 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 24:040, 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 8:030, Section 4(2) or 405 KAR 8:040, 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 8:050, 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 16:210 or 405 KAR 18:220.

(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 complied 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 24:040.

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 7:040, 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 7:060; Sections 4, 6, and 7 of405 KAR 8:050; 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 8:030 or 405 KAR 8:040, 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 12:010, 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 12:030.

(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 7:060 and 405 KAR 8:050, 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 7:090.

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. Prior to July 15, 1982, applications for major and minor revisions shall include a basic fee of $250. Prior to July 15, 1982, 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. On and after July 15, 1982, the above amounts shall be increased to $375 and seventy-five dollars ($75) respectively.

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 10:030, Section 4, will be provided by the applicant for the proposed period of renewal; and

4. Prior to July 15, 1982, a fee of $250. On and after July 15, 1982, a fee of $375.

(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.

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 Title 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 Title 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 for applications submitted prior to July 15, 1982, a fee of $375 for applications submitted on and after July 15, 1982; 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 8:030, 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 8:040, 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 would be eligible to receive a permit in accordance with the criteria specified in Section 14.

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.

(4) Proof of transfer, sale or assignment of rights. The successor in interest shall submit proof of the execution of the transfer, sale or assignment of rights within fifteen (15) days following execution of the agreement between the prior permittee and the successor in interest.

(5) Release of bond liability. The department may release the prior permittee from bond liability on the permit area provided that the successor in interest has filed a performance bond satisfactory to the department, has received written approval of the department for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under this Title for reclamation of the areas affected by all prior permittees.

(6) Interim program permits. The procedures of this section, including prior approval, public notice and comment, issuance of approval of transfer, sale or assignment of rights, submission of proof of execution of the agreement, and release of bond liability, shall apply to successors in interest to a valid interim program permit. However, the application content, performance bond requirements, and criteria for approval shall be modified by the department to be consistent with the requirements of the interim program.

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 7:090.

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 8:020. Coal exploration.

RELATES TO: KRS 350.057, 350.610
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.057, 350.060, 350.465
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 20:010.
(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 8:010, 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 20:010;
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) Prior to July 15, 1982, a fee of $250. On or after July 15, 1982, a fee of $375.
(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 20:010, 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 20:010.

(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 8:010, 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 20:010, and any conditions on approval for exploration and reclamation imposed by the department.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.465
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 ap-

plicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(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 8:010, 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 24:040, 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 8:010, 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 10:030, 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 8:010, 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 8:010, 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 16:050, 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 8:050, 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 proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the department.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum im-

mediately 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 8:010, 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. The qualified registered professional engineer shall not be required to certify true ownership of property.

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 16:210):

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 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050;

(e) A plan for revegetation as required in 405 KAR 16:200, 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 ap-

propriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, 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 16:010, 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 16:150, and 405 KAR 16:190, 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 16:040; 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 16:120.

(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 16:120;

(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 16:120, 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 16:130. 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 16:130, 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 in-

cluding 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 16:220.

(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 16:220.

(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 16:220.

(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 16:010, 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 24:040, 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 24:040, 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 16:060, 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 16:070, 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 16:060, Section 6.

(d) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 16:110.

(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 16:080.

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 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 16:090. 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 16:100.

(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. Perma-

nent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. 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 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. 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 16:170.

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 16:210;

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 8:040. 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
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 8:010.
(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 8:010, 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 24:040, 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 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, 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 8:010, 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 8:010, 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 18:050, 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 8:050, Section 3 for such designated land.

(b) When a soil survey as required by this section contains soil map units which have not been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;
(b) The coal seams or other mineral strata mined;
(c) The extent of coal or other minerals removed;
(d) The approximate dates of past mining; and
(e) The uses of the land preceding mining.
(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:
(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;
(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;
(c) The boundaries of any public park and locations of any cultural or historical resources listed in 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 8:010, 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. The qualified registered professional engineer shall not be required to certify the true ownership of property.

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 18:220):

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 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050;

(e) A plan for revegetation as required in 405 KAR 18:200, 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 18:200, 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 18:010, 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 18:150 and 405 KAR 18:190, 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 18:040; 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 18:210, 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 18:140, 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 18:130. 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 8:030, 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 18:230.

(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 18:230.

(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 18:230.

(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 24:040, 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 24:040, 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 18:060, 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 18:070, 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 18:110.

(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 18:080.

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 18:090. 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 18:100.

(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 18:100. 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 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. 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 18:170.

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 18:220;

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 8:050. 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
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations pertaining to permits for surface coal min-

ing 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 20:080, 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 20:080 and Title 405, Chapter 18.

Section 2. Augering. (1) General. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations. 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 20:030. 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 20:030.

(2) Augering on previously mined lands.

(a) In addition to other requirements of Title 405, Chapter 8, each application for a permit to conduct auger mining on an area mined prior to May 3, 1978, and not reclaimed to the standards of Title 405 shall contain such information as the department deems necessary to describe the proposed affected area and method of operation and show that the proposed method of operation will result in stable postmining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities.

(b) If the department determines that the affected area cannot be stablized and reclaimed subsequent to augering or that the operation will result in adverse impact to the proposed permit area or adjacent area, the permit shall not be issued.

(c) The department shall, consistent with all applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, issue a permit if the applicant demonstrates that the proposed surface coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of the previously mined area.

(d) The department shall ensure that all applicable performance standards can be met.

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 8:030, Section 21 or 405 KAR 8:040, 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 20:040.

(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 non-mined 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 20:040 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 20:050, 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 16:190 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 16:210;

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 16:190, the operation will be conducted in compliance with the requirements of 405 KAR 20:050.

(c) The requirements of 405 KAR 20:050 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 20:060, 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 20:060, Section 2.

Section 6. Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining.

(1) General.

(a) Applicability. This section applies to nonmountaintop 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 16:190 or 405 KAR 18:190 and 405 KAR 20:060, 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 16:210 or 405 KAR 18:220, 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 20:060, 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 20:060, 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 16:020 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 20:020 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 16:130.

(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 16:020;

(f) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 405 KAR 20:020;

(g) Provisions for off-site storage of spoil will comply with the requirements of KRS Chapter 350 and 405 KAR 16:130;

(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 20:020 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 20:020 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 20:070.

(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 20:070.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 10:010. 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
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 10:020 and 405 KAR 10:030.

(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 10:040, and bond amount reductions under 405 KAR 10:020, 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 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) 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 10:020, 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 10:040, 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 10:030.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 10:020. 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
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 16:200, Section 6(2)(c) or 405 KAR 18:200, 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 16:200, Section 6(2)(c)2 or 405 KAR 18:200, 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 8:030, Section 24(4) and 405 KAR 8:040, 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 10:040.

(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 16:200 and 405 KAR 18:200, 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 16:210, 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 16:210, 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 8:010, 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 10:040, 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 10:040, 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 10:040, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 10:030. 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
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 10:020, 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 10:010, Section 3(2).
(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020, 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 10:020 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 10:010, 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 7:090 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 10:050, 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 10:010, 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 7:090 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 10:040.

(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 7:090 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 10:040. 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
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. This regulation also sets forth certain notice and hearing requirements pertinent to bond release.

Section 1. Procedures for Release 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) of this regulation has been completed on the entire permit area or increment. The procedures of this section also apply to requests made pursuant to 405 KAR 10:020, Section 4(3).

(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 publication 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 7:090 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 7:090 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.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) Liability under performance bonds shall not be eligible for release until the permittee has met the requirements of the applicable reclamation phase as defined in subsection (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.

(2) The maximum portion of the liability under performance bonds applicable to a permit area which may be released shall be calculated on the following basis:

(a) Release 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 an additional amount not to exceed twenty-five (25) percent of the total original bond amount on the permit area 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) 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.

(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 per-

mit includes an alternative postmining land use plan approved pursuant to 405 KAR 16:210 or 405 KAR 18:220, 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 16:200, Section 6(2)(c) or 405 KAR 18:200, 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 16:200, Section 6(2)(c)2 or 405 KAR 18:200, 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 20:040, Section 1(3) and the plan approved under 405 KAR 8:050, 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 16:210 or 405 KAR 18:220; 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 10:020, Section 3(2) has expired.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 10:050. 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
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 7:090; 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 7:090.

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 12:010. 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
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 permitted under Title 405, Chapter 8 at least until phase I reclamation, as defined in 405 KAR 10:040, 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 permitted under Title 405, Chapter 8.

(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 7:090.

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 7:090, 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 12:030.

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 7:090. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 12:020. 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
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 7:090.

(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 7:090, 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 7:090.

(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 7:090, 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 7:090 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 7:090.

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 inabili-

ty to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:090.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 12:030. 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
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 7:090 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. Citizens Requests to Accompany Inspector. (1) Any person requesting an inspection under Section 1 may request to accompany the authorized representative of the department during an inspection relative to the violation, condition, or practice with which the request was concerned.

(2) Such person shall have a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information, provided that the person is in the presence of and is under the control, direction, and supervision of the authorized representative of the department while on the property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(3) The authorized representatives of the department shall exercise reasonable discretion in establishing the time

and manner for inspections under this section. Nothing in this section shall be construed to place a duty of care upon the department for persons accompanying authorized representatives of the department.

(4) Any person desiring to participate in an inspection as provided in this section shall provide his or her own transportation to the site, and shall wear a hard hat and toe caps, to be supplied by the department.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:010. 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
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 20:020 through 405 KAR 20:080 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 permanently reclaimed in accordance with the requirements of KRS Chapter 350, the regulations of this Title, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the department approves the retention of such equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 7. Temporary Cessation of Operations. (1) Notice required. Not less than three (3) days prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the department that such temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 16:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 16:110, 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 com-

pliance with performance standards shall be made secure to the extent practicable.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:020. 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
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 20:030. 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 16:200, 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. Deferments. (1) The deparment may allow a permittee to defer coal removal and contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that said deferment is necessary to address at least one (1) of the following:

(a) Adverse condition including weather, labor, and other conditions clearly beyond the permittee's control.

(b) Combined surface and underground mining activities subject to the provisions of 405 KAR 8:050, Section 7 and 405 KAR 20:020, and other mining operations pursuant to KRS 350.080.

(c) Coal marketing problems.

(2) Application for a deferment pursuant to this section

shall be in the form prescribed by the department. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that no environmental damage will occur during the period of deferment.

(3) Reclamation deferments may be approved for a period reasonably related to the specified conditions justifying the deferment. The deferral shall not extend beyond the expiration date of the permit and in no event shall the aggregate deferral period exceed thirty (30) months, except where approved combined mining is being carried out under subsection (1)(b) of this section.

(4) The department shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the department in the event of forfeiture.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:030. Signs and markers.

RELATES TO: KRS 350.200, 350.430, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.200, 350.465
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 16:060, 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 16:050, Section 3, the stockpiled material shall be clearly marked.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

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

RELATES TO: KRS 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 16:060, 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 16:060, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:050. Topsoil.

RELATES TO: KRS 350.062, 350.405, 350.415, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 16:200. All soil tests shall be performed by a qualified laboratory using standard methods approved by the department.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:060. 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
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 16:070, 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 16:200, Section 1(2).

(b) Stablizing the backfilled material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 405 KAR 16:190, 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 16:190, 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 disturbance 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 16:040 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 16:070 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 16:080 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 16:030.

(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 16:070, Section 1(1)(g).

(3) The moving of spoil or overburden or the disturbance of the natural barrier required by 405 KAR 16:010, Section 4, in order to release such accumulated water is prohibited, except when specifically authorized by the department.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:070. 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
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 16:200; 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 16:090, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:080. 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
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 16:050, Sections 4 and 5, 405 KAR 16:190, and 405 KAR 16:200.

(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

16:130, 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 16:130.

(e) Topsoil shall be handled in compliance with 405 KAR 16:050.

(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 16:060, 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 16:050, Sections 4 and 5, 405 KAR 16:190, and 405 KAR 16:200. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:090. 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
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 16:070, 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 16:070, 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 16:070, 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 16:190, 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 16:070, 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 16:190 and 405 KAR 16:200.

(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 16:060 and 405 KAR 16:100, 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 7:040, Section 5 and with 401 KAR 4:030.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:100. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.420, 350.455, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 16:090, 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 16:200 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 16:190, Section 6 and 405 KAR 16:200.

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department

for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:110. 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
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 16:060, 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 8:030, 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 16:070, 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 16:070, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:120. Use of explosives.

RELATES TO: KRS 350.430
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
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 16:030, 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 24:040, 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.

Appendix A of 405 KAR 16:120

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 16:120

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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:130. Disposal of excess spoil.

RELATES TO: KRS 350.090, 350.410, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 16:070; 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 16:050. 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 16:080, 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 16:210, 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 16:190, 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 8:030, 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 16:140 or 405 KAR 18:140. 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 16:140, 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 8:040, 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 16:080, 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 16:080, 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 16:080, 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 16:010.

(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.

Appendix A of 405 KAR 16:130

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 16:130

Safety Factors

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

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:140. Disposal of coal processing waste.

RELATES TO: KRS 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 16:130, 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 16:050, 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 8:030, 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) The responsible registered professional engineer shall certify to the department within two (2) weeks after each inspection that the coal processing waste bank has been constructed as specified in the design approved by the department. 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 16:130, 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 16:060, Sections 1, 2 and 9; 405 KAR 16:070; 405 KAR 16:090; 405 KAR 16:110.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 16:130, 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 16:130, 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 16:050, 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 16:200. 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 16:200 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 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 8:040, Section 27.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:150. 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
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 16:200. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

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

RELATES TO: KRS 350.425
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 16:080, Section 1. Adequate outlets for discharge from these diversions shall be in accordance with 405 KAR 16:060, 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 16:060, 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 16:100, 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 16:100.

(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 16:100 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:170. Air resources protection.

RELATES TO: KRS 224.033, 350.020, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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 8:030, Section 35, and approved by the department.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:180. 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
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 16:060, Section 11 or restoring stream channels as required in 405 KAR 16:080, 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 16:200:
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:190. 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
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 16:020.

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, except as provided in paragraph (c) of this subsection, 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.

(c) Where the permittee is conducting augering operations on previously mined lands under a permit issued under 405 KAR 8:050, Section 2(2), the permittee shall use all reasonably available spoil material to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the permittee shall backfill the highwall to a minimum of four (4) feet above the coal seam being mined, seal all holes in accordance with 405 KAR 20:030, and stablize any adversely, physically impacted highwall.

(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 20:060.

(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 non-combustible 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 16:200, 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 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 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 16:130;

(c) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 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 16:200 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 16:200. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:200. 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
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 20:040 shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 8:030, 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 8:030, 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 successful vegetation, and continues for not less than five (5) years.

(c) The ground cover and productivity of the revegetated area shall be considered equal if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands, or ground cover and productivity are at least ninety (90) percent of the standards in a technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the department under the following standards:

1. For previously mined areas that were not reclaimed to the requirements of Title 405, Chapters 16 through 20, the ground cover of living plants shall not be less than 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:210. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
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 ap-

plication 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 7:020. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:220. Roads.

RELATES TO: KRS 350.020, 350.028, 350.085, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
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 16:060, Section 4; 405 KAR 16:140, Section 1; 405 KAR 16:190, 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 16:190, Sections 3 through 6; and 405 KAR 16:200.

(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 16:080. 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 subparagraph 1 of this paragraph 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 subparagraph 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 16:050, Section 4(2) and revegetated in accordance with 405 KAR 16:200, Sections 1 through 6.

(2) Unless otherwise authorized by the department, all road surfacing materials shall be removed and disposed of under 405 KAR 16:150, Section 1.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 16:250. Other facilities.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:010. 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
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 20:020 through 405 KAR 20:080, 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 18:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 18:110, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:020. 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
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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:030. 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
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 18:060, 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 18:050, Section 3, the stockpiled material shall be clearly marked.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:040. 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
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 18:060, 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 18:060, 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 18:060, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:050. Topsoil.

RELATES TO: KRS 350.151, 350.405, 350.415, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
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 18:200. All soil tests shall be performed by a qualified laboratory using standard methods approved by the department.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:060. 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
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 18:070, 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 18:200, 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 18:190;
(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 18:190, 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 18:070 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 18:070, Section 1(1);

2. All water from the underground mine discharged from the treatment facility meets the effluent limitations of 405 KAR 18:070 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 18:040 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 18:070 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 18:080 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 18:030.

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:070. 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
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 16:200; 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 18:090, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:080. 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
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 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 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 18:050, Sections 4 and 5, 405 KAR 18:190, and 405 KAR 18:200.

(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 18:130, 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 18:130.

(e) Topsoil removed from the diversion excavations shall be handled in accordance with 405 KAR 18:050.

(7) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the department under 405 KAR 18:060, 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 18:060, 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 18:050, Sections 4 and 5, 405 KAR 18:190 and 405 KAR 18:200. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:090. 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
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 16:070, 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 18:070, 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 18:070, 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 18:190, 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 18:070, 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 18:190 and 405 KAR 18:200.

(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 18:060, Section 8 and 405 KAR 18:100.

(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 7:040, Section 5 and with 401 KAR 4:030.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:100. 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
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 18:090, 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 18:200 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 18:190, Section 4 and 405 KAR 18:200.

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:110. 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
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 8:040, 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 18:070, 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 18:070, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:120. Use of explosives.

RELATES TO: KRS 350.151, 350.430
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465
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 depart-

ment, 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 18:030, 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 24:040, 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.

Appendix A of 405 KAR 18:120

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 18:120

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: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:130. 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
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 18:190 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 18:070; 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 18:050. 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 18:080, 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 18:220; 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 16:190, 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 8:040, 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 16:140 or 405 KAR 18:140. 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 18:140, 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 8:040, 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 18:080, 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 18:080, 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 18:080, Section 1(6).

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved post-mining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 5. Disposal on Existing Benches. (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 16:010.

(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.

Appendix A of 405 KAR 18:130

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 18:130

Safety Factors

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

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:140. 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
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 18:130, 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 18:050, 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 8:040, 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) The responsible registered professional engineer shall certify to the department within two (2) weeks after each inspection that the coal processing waste bank has been constructed as specified in the design approved by the department. 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 18:130, 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 18:060, Sections 1, 2 and 7, 405 KAR 18:070, 405 KAR 18:090, and 405 KAR 18:110.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 18:130, 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 18:130, 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 18:050, 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 18:200. 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 18:200 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 8:040, Sections 27 and 28.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:150. 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
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 18:200. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:160. Coal processing waste dams and impoundments.

RELATES TO: KRS 350.151, 350.425
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
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 18:080, Section 1. Adequate outlets for discharge from these diversions shall be in accordance with 405 KAR 18:060, 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 18:060, 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 18:100, 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 Conserva-

tion Service criteria referenced in 405 KAR 18:100.

(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 18:100, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:170. 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
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 8:040, Section 35 and approved by the department.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:180. 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
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 18:060, Section 9 and 405 KAR 18:210, Section 4 or restoring stream channels as required in 405 KAR 18:080, 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 18:200:

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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:190. 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
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 18:040, 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 non-combustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, and other materials identified by the department as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land use.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, 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 18:200. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:200. 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
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 20:040 shall apply.

(2) All revegetation shall be in compliance with the plan submitted under 405 KAR 8:040, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:210. Subsidence control.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
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 8:040, 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 8:040 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:220. 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
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the department to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

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

(1) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(2) To conditions capable of supporting higher or better alternative uses of which there is reasonable likelihood, as approved by the department under Section 4.

Section 2. Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.

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

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

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses. The determination of minimum acceptable postmining land use capability shall be based upon the potential utility of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from underutilization.

Section 4. Alternative Postmining Land Use. Alternative postmining land uses may be approved by the department after consultation with the landowner or the land management agency having jurisdiction over the lands, if the criteria of this section are met:

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

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

(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained prior to the final release of bond liability for the permit area.

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

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

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

(5) Plans for the postmining land use 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 en-

vironmental 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 18:200, 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 7:020. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:230. 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
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 18:060, Section 4; 405 KAR 18:140, Section 1; 405 KAR 18:190, 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 18:190, Sections 3 and 4; and 405 KAR 18:200.

(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 18:080. 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 sub-

paragraphs 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 subparagraph 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 18:050, Section 4(2) and revegetated in accordance with 405 KAR 18:200, Sections 1 through 6.

(2) Unless otherwise authorized by the department, all road surfacing materials shall be removed and disposed of under 405 KAR 18:150, Section 1.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 18:260. Other facilities.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
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, con-

structed, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:010. Coal exploration.

RELATES TO: KRS 350.057, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.057, 350.465
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 8:020, 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 8:020, Section 2 and shall comply with Section 3 of this regulation.

Section 2. Required Documents. Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of the department for the activities granted under 405 KAR 8:020, Section 2. The written approval shall be available for review by the authorized representative of the department or the Office of Surface Mining Reclamation and Enforcement upon request.

Section 3. Performance Standards for Coal Exploration. The performance standards in this section are applicable to coal exploration which substantially disturbs land surface.

(1) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 405 KAR 8:020, 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 16:220.

(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 16:220 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 16:220.

(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 16:040.

(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 16:060, Section 2 or sedimentation ponds which comply with 405 KAR 16:090. 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 16:060, Section 4 and 405 KAR 16:190, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:020. 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
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 8:050, 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 8:050, 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 8:050, 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 8:050, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:030. 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
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 8:050, 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 16:010, 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 16:070, 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 16:060, Section 1 and 405 KAR 16:070.

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:040. 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
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 8:050, 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 16:050, Section 3 or 405 KAR 18:050, 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 16:190, Sections 1 through 5 or 405 KAR 18:190, 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 8:050, 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 8:050, 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 16:200, Sections 3 and 4, or 405 KAR 18:200, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:050. 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
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 8:050;
(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 16:210 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 8:050, 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 16:130.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:060. 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
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 20:050.

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 16:130 or 405 KAR 18:130.
(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 8:050.
(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 8:050, that the variance be granted.
(6) The operations are conducted in full compliance with a permit issued in accordance with 405 KAR 8:050.
(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 16:130 or 405 KAR 18:130.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:070. 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
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 8:050 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 18:030.

(2) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with 405 KAR 18:230 and 405 KAR 18:260.

(3) Any stream or channel realignment shall comply with 405 KAR 18:080, 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 18:060, Section 2 and 405 KAR 18:090, and all discharges from these areas shall meet the requirements of 405 KAR 18:060, Section 1 and 405 KAR 18:070 and any other applicable state or federal law.

(5) Permanent impoundments associated with coal processing plants shall meet the requirements of 405 KAR 18:100 and 405 KAR 18:060, Section 8. Dams constructed of or impounding coal processing waste shall comply with 405 KAR 18:160.

(6) Use of water wells shall comply with 405 KAR 18:060, Section 6.

(7) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with 405 KAR 18:140, 405 KAR 18:150 and 405 KAR 18:130.

(8) Discharge structures for diversions and sediment control structures shall comply with 405 KAR 18:060, Section 3.

(9) Air pollution control measures associated with fugitive dust emissions shall comply with 405 KAR 18:170.

(10) Fish, wildlife and related environmental values shall be protected in accordance with 405 KAR 18:180.

(11) Slide areas and other surface areas shall comply with 405 KAR 18:010, 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 18:060, Section 8.

(13) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with 405 KAR 18:060, Section 9, 405 KAR 18:190, 405 KAR 18:200, 405 KAR 18:220, and 405 KAR 18:010, 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 20:040.

(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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 20:080. In situ processing.

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
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 8:050, 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 18:110, 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 24:020. Petition requirements.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
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 objective 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 objective evidence shall be specific as to the petitioned "area" as defined in 405 KAR 7:020 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 and objective 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 objective 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 24:030. 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
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 objective evidence. If the petition does not contain new and substantial allegations of facts, the department shall return the petition with a statement of its findings and a reference to the record of the previous designation proceedings.
(6) Petitions received after the close of the public comment period on a permit application relating to the same area shall not prevent the department from issuing a decision on that permit application. The department may return such a petition to the petitioner with a statement of why the department will not consider the petition. For the 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 8:010, 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, telephone number, and notarized signature;
(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 objective 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.

Section 9. Administrative and Judicial Review. (1) Following any order or determination of the department concerning completeness or frivolousness of a petition, any person with an interest which is or may be adversely affected may request a hearing on the reasons for the order or determination, in accordance with 405 KAR 7:090. Any person with an interest which is or may be adversely affected and who has participated in an administrative hearing under this subsection shall have the right to judicial review as provided in KRS 350.610(6).

(2) Any person with an interest which is or may be adversely affected by a final decision of the secretary under Section 8(6) shall have the right to judicial review as provided in KRS 350.610(6).

Section 10. 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.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

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

405 KAR 24:040. Permit application review.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
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 24:030.

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 24:030 and this regulation.

JACKIE A. SWIGART, Secretary
ADOPTED: April 12, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: May 14, 1982 at 3:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction

704 KAR 15:090. Incentive loan program; mathematics and science.

RELATES TO: KRS 156.611
PURSUANT TO: KRS 13.082, 156.070, 156.611
NECESSITY AND FUNCTION: KRS 156.611 sets up an incentive loan program and requires the Superintendent of Public Instruction to promulgate and administer regulations adopted by the State Board of Education which establishes requirements and procedures for awarding incentive loans to persons declaring an intention to serve and who actually render service in the critical shortage fields of mathematics and science. This regulation implements that function.

Section 1. (1) Applicants shall be enrolled at institutions of higher education which have been approved by the State Board of Education to offer teacher education programs.
(2) The applicant shall be admitted to a teacher education program leading to a teaching major or area of concentration in mathematics, biology, chemistry, earth science, physics, math-physical science, natural sciences, or geology.

Section 2. (1) Priorities for awarding the incentive loans shall be given to graduates of Kentucky high schools and Kentucky residents. During the initial year of the program priority will be given to applicants with the highest grade point average—American College Testing score combination and the college or university recommendation as outlined in Section 9. Thereafter, first priority will be given to recipients who have successfully completed one (1) or more years in the program.
(2) Eligible students across the state who apply for the loan will be rank ordered by a statewide selection committee based on the recommendation of the college or university as outlined in Section 9 and the grade point average for all college work completed at the time of application combined with the American College Testing score and the criterion outlined in Section 9. The top ranking students would then be granted loans in the amount requested up to the maximum.

Section 3. Certified teachers who do not possess one (1) of the majors or areas as set forth in Section 1 and who have been admitted to a teacher education program shall also qualify for a summer school loan equal to no more than one-third (⅓) the annual loan amount, not to exceed three (3) summer school terms.

Section 4. The maximum amount of a yearly loan shall not exceed the amount established annually by the State Board of Education based on the average cost of room, board, and tuition at the state four (4) year institutions of higher education. Each summer school loan shall not exceed one-third (⅓) of the maximum yearly loan.
(1) A student initially receiving a loan during his/her sophomore year shall be eligible for a maximum of three (3) annual loans.
(2) A student initially receiving a loan during his/her junior year shall be eligible for a maximum of two (2) loans.
(3) A student initially receiving a loan during his/her senior year shall be eligible for one (1) loan.
(4) Applicants must re-apply each year for the loan and shall be given priority consideration over new applicants.

Section 5. Service as a certified teacher in one (1) of the critical shortage areas shall be rendered within the Commonwealth in a public accredited middle, junior high, or secondary school and verification of services shall be submitted in writing to the Superintendent of Public Instruction from the local school district superintendent or building principal. A major portion of the teacher's school day shall be spent teaching in the fields of mathematics or science.

Section 6. Loans shall be converted based on the formula of:
(1) Two (2) semesters of teaching for each year the loan was received;
(2) One (1) semester of teaching for each summer school attendance; and
(3) Seventy (70) school days during each of six (6) school semesters immediately after obtaining an appropriate major or area of concentration shall be converted to interest-free scholarship.

Section 7. The recipient shall maintain at least a 2.5 grade point average within the institution of higher education and make normal progress toward receiving certification in one (1) of the areas listed in Section 1 in order to remain in the loan program.
(1) Any participant who fails to complete an appropriate program of studies shall be immediately liable to the Department of Education for the sum of all outstanding loans and interest for the entire period of the loan.
(2) Failure to repay the loan and interest or render service shall be cause for revocation of a person's teaching certificate, pursuant to KRS 161.120.
(3) The interest rate for all loans shall be established by the Superintendent of Public Instruction annually based on practices followed by Kentucky Higher Education Assistance Authority and shall be published prior to the awarding of the loans.

Section 8. Repayment of loans may be deferred by the Superintendent of Public Instruction when it is in the best interest of the program and it shall be the recipient's responsibility to request deferrals.

Section 9. The College or Department of Education at each eligible institution shall establish a screening committee to verify that a student is eligible for the loan. The committee will certify that eligible loan applicants have a reasonable chance for completing the Teacher Education Program for certification prior to verification of eligibility to the student financial aid officer. The instructional screening committee shall incorporate the following criteria:
(1) Grade point average and other evidence of scholastic achievement.
(2) College entrance scores.
(3) Performance tasks that promote critical thinking and reasoning skills.
(4) Registration in appropriate academic courses that are in the identified areas of science or mathematics.
(5) A priority listing of eligible applicants.
(6) Verification on a semester by semester basis that loan recipients are making significant progress toward a degree and/or certification.
(7) Evidence that the loan applicant possesses other

characteristics which the institution deems to be related to success in teaching science or mathematics.
(8) Financial need of applicant.

Section 10. The screening committee shall forward the applications and names in rank order of the eligible applicants to the State Department of Education and to the institution's financial aid officer.

Section 11. This regulation shall be effective July 15, 1982.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 12, 1982 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:110. Refugee assistance.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. This regulation sets forth the eligibility criteria and types and amounts of assistance for refugees residing in Kentucky.

Section 1. Definitions. Terms used in this regulation are defined as follows:
(1) "Refugee" is defined as any person of any nationality who:
(a) Because of persecution or fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion fled from their country or the country where such person habitually resided and cannot return there because of fear of persecution on account of race, religion, nationality, membership in particular social group, or political opinion; and
(b) Has been granted status by the United States Department for Immigration and Naturalization Service (INS) as refugee, asylee, parolee, voluntary departure, permanent resident alien, conditional entrant, or Cuban Haitian entrant.
(2) "Cuban Haitian Entrant Program (CHEP)" is the program for Cuban or Haitian persons who meet the status, documentation, and period of eligibility criteria as set forth in 45 CFR Parts 401.2 and 401.12(c).
(3) "Refugee Resettlement Program (RRP)" is that program for persons who meet the following criteria, excluding those persons who qualify for the Cuban Haitian Entrant Program:
(a) Have been United States residents for not more than eighteen (18) months beginning with the month a refugee entered the United States; and
(b) Meet one (1) of the following status criteria as determined by the Immigration and Naturalization Service (INS).
1. A person who was receiving assistance or services under the Indochinese Refugee Assistance Program when that program terminated.
2. A person from Cambodia, Laos, or Vietnam who has parolee status, provided that the person's status, if assigned on or after June 1, 1980, clearly indicates that the person has been paroled as a refugee or asylee.
3. A person from Cuba who has parolee status as a refugee or asylee and who entered the United States on or after October 1, 1978.
4. A person from any other country other than Cambodia, Laos, Vietnam, or Cuba who has parolee status as a refugee or asylee.
5. A person admitted from any country with a conditional entrant status under Section 203(a)(7) of the Immigration and Nationality Act (INA).
6. A person from any country admitted as a refugee under Section 207 of the INA (as added by the Refugee Act of 1980).
7. A person from any country who has been granted asylum status under Section 208 of the INA (as added by the Refugee Act of 1980).
8. A person from any country who previously held one (1) of the statuses identified above whose status has subsequently been adjusted to that of permanent resident alien.

Section 2. Application. Each refugee household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility in accordance with the procedural requirements prescribed by the department.

Section 3. Eligibility Criteria. The applicant shall meet the following conditions of eligibility for receipt of cash and/or medical assistance under the Refugee Resettlement Program or Cuban Haitian Entrant Program:
(1) The applicant shall meet the definition of a refugee as contained in Section 1 of this regulation; and
(2) The applicant shall be ineligible for Aid to Families with Dependent Children (AFDC) and Medical Assistance Programs; and
(3) The applicant shall be a Kentucky resident as specified in 904 KAR 2:006, AFDC technical requirements; and
(4) The applicant shall meet the financial need and resource limitations criteria of Aid to Families with Dependent Children as set forth in 904 KAR 2:016, Standards for need and amount; AFDC, or if the application is for medical assistance only, the applicant shall meet the AFDC-related Medical Assistance Program financial eligibility standard, as set forth in 904 KAR 1:004, Resource and income standard of medically needy; and
(5) For receipt of cash assistance the applicant shall within sixty (60) days from the date of entry to the United States meet the AFDC work registration criteria as set forth in 904 KAR 2:006, AFDC technical requirements.
(6) The applicant shall meet the period of eligibility and status criteria contained in the definition of the Cuban Haitian Entrant Program or the Refugee Resettlement Program in Section 1 of this regulation.

Section 4. Benefit Levels. (1) Cash assistance shall be the same as for AFDC as set forth in 904 KAR 2:010, AFDC; standards for need and amount, except that the thirty dollars ($30) plus one-third (⅓) disregard of earned income does not apply.

(2) Medical assistance benefits shall be the same as for all other Medicaid recipients.
(3) Payment of benefits is subject to the availability of federal funds, i.e., payments may be reduced, suspended or terminated if federal funds are insufficient or are not provided to the state in a timely manner.

Section 5. Time and Manner of Payment. Time and manner of payment shall be in accordance with the standards for AFDC as shown in 904 KAR 2:050, Time and manner of payment.

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, Hearings and appeals.

JOHN CUBINE, Commissioner
ADOPTED: May 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: May 14, 1982 at 11:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Reprint

* COMPILER'S NOTE: This regulation is reprinted to correct a typographical error in Section 5. The renewal fee for expired licenses is $100 instead of $150 as shown on page 1181 in the May *Register*.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

902 KAR 55:010. Licensing of manufacturers and wholesalers.

RELATES TO: KRS Chapter 218A
PURSUANT TO: KRS 13.082, 194.050, 211.090
NECESSITY AND FUNCTION: KRS 218A.150, 218A.160 and 218A.170 authorizes the Department for Human Resources to license manufacturers and wholesalers of controlled substances. It is the purpose of this regulation to establish uniform requirements for such licenses.

Section 1. State License Required of Manufacturers and Wholesalers. No person shall manufacture, wholesale, distribute, or repack any controlled substance in this state without having first obtained a license to do so from the Department for Human Resources.

Section 2. Out-of-State Exemptions. Manufacturers, wholesalers, distributors, and repackers not located within the Commonwealth of Kentucky but who are registered with the appropriate federal agency pursuant to the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (PL 91-513: 84 Stat. 1236) and the regulations promulgated thereunder are hereby exempted from the licensure requirements of this regulation and are authorized to operate as such in this state by virtue of their federal registration.

Section 3. Joint Venture Exemptions. Two (2) or more pharmacies, who engage in a joint venture for the purpose of purchasing drugs in order to effectuate a savings in the purchase price thereof and in which no profit is realized in the transaction by any of the participating pharmacies, are exempt from the licensure requirements of this regulation provided proper records of the transaction are maintained.

Section 4. Qualifications for Licensing. (1) No license shall be issued pursuant to this regulation unless and until the applicant has furnished proof satisfactory to the Department for Human Resources:
(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to controlled substances and is of good moral character or, if the applicant be an association or corporation that the managing officers are of good moral character; and
(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.
(2) No license shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.
(3) A license issued pursuant to this regulation may be suspended or revoked for cause.

Section 5. License Fees; Renewals. All applications for a license under the provisions of this regulation shall be submitted to the Department for Human Resources on forms furnished by the department and shall be accompanied by a license fee of *$150* [twenty-five dollars ($25)]. All licenses shall expire on June 30th following date of issuance and be renewable annually thereafter upon payment of a renewal fee of *$100* [twenty-five dollars ($25)] and shall be nontransferable.

Section 6. Codeine Registry. All wholesalers, manufacturers (including distributors and repackers) shall keep a separate codeine registry showing the following: date; registration number of recipient; name of recipient; address; name of preparation; and quantity.

DAVID T. ALLEN, Commissioner
ADOPTED: March 30, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 14, 1982 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the May 5, 1982 Meeting

(Subject to subcommittee approval at the June 2, 1982 meeting.)

The Administrative Regulation Review Subcommittee held its regular meeting on Wednesday, May 5, 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 Jim Bruce and Albert Robinson.

Guests: Greg Lawther, Barbara Howard, Joe Anderson, Sharon Rodriguez and Ked R. Fitzpatrick, Department for Human Resources; Martha L. Hall and Larry Wilson, Department for Natural Resources; Linda Horton, Department of Local Government; Patrick Watts, Department of Insurance; Morris Carter and Carl B. Larsen, Kentucky Harness Racing Commission; Jim Stanley, Legail Poole, Gene Taylor, Dee Maynard and John Bugbee, Department of Personnel; Don McCormick, John Phillips and Bill Graves, Department of Fish and Wildlife Resources; Fulton Farmer, Charles Wickliffe, Martha Smith and Brenda Duvall, Finance and Administration Cabinet; Pam Johnson, Kentucky Retirement Systems; Thomas Emerson, Board of Veterinary Examiners; Lisa Gray, Ashland Oil; John Hinkle, Kentucky Retail Federation; Marvin Gray, Kentucky Manufacturing Housing Institute; Angie Workman, NFIB; and Katie Nienaber.

Staff: Susan Harding, Cindy De Reamer, O. Joseph Hood, Mary Helen Miller, Bob Doris and Mike Greenwell.

Chairman Brinkley called the meeting to order. On motion of Senator Bunning, seconded by Representative Robinson, the minutes of the April meeting were approved.

The following emergency regulations were reviewed and the subcommittee took no action:

DEPARTMENT OF FINANCE

Travel Expense and Reimbursements

200 KAR 2:006E. Employees' reimbursement for travel.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Air Pollution

401 KAR 51:017E. Prevention of significant deterioration of air quality.

401 KAR 51:052E. Review of new sources in or impacting upon non-attainment areas.

PUBLIC PROTECTION AND REGULATION CABINET

Public Service Commission

Utilities

807 KAR 5:011E. Tariffs.

DEPARTMENT FOR HUMAN RESOURCES

Bureau for Social Insurance

Medical Assistance

904 KAR 1:013E. Payments for hospital inpatient services.

904 KAR 1:036E. Amounts payable for skilled nursing and intermediate care facilities services.

Public Assistance

904 KAR 2:016E. Standards for need and amount; AFDC.

904 KAR 2:100E. Home energy assistance program.

Unemployment Insurance

904 KAR 5:030E. Employer contributions.

The following regulation was deferred until the July meeting:

KENTUCKY HARNESS RACING COMMISSION

Harness Racing Rules

811 KAR 1:180. Personnel to be licensed; fees.

The following regulations were disapproved by the subcommittee for nonconformance with statutory authority:

DEPARTMENT OF PERSONNEL

Personnel Rules

101 KAR 1:040. Service regulations.

101 KAR 1:200. Rules for unclassified service.

The following regulations were approved by the subcommittee and ordered filed:

DEPARTMENT OF PERSONNEL

Personnel Rules

101 KAR 1:055. Compensation plan, pay for performance.

101 KAR 1:090. Types of appointments.

101 KAR 1:110. Promotion, transfer, demotion and detail to special duty.

KENTUCKY EMPLOYEES' RETIREMENT SYSTEMS

General Rules

105 KAR 1:070. Allocation of special appropriation for military service credit. (Representative Robinson voted no.)

DEPARTMENT OF FINANCE

Travel Expense and Reimbursements

200 KAR 2:006. Employees' reimbursement for travel.

Purchasing

200 KAR 5:320. Repeal of 200 KAR 5:302.

Area Development

200 KAR 9:010. Approval of projects; expenditures of funds, title.

Division of Occupations and Professions

Board of Veterinary Examiners

201 KAR 16:050. Continuing education.

DEPARTMENT OF FISH AND WILDLIFE RESOURCES

Game

301 KAR 2:045. Upland game birds, furbearers and small game; seasons, limits.

301 KAR 2:115. Gun and archery seasons for deer.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:091. Repeal of 806 KAR 9:090.

Health Maintenance Organizations

806 KAR 38:060. Cancellation of enrollees' coverage. (As amended.)

KENTUCKY HARNESS RACING COMMISSION

Harness Racing Rules

811 KAR 1:130. Security; persons permitted on licensed premises.

811 KAR 1:135. Identification cards and badges.

811 KAR 1:190. Matters not covered by rules; violations.

811 KAR 1:205. Guidelines for fairs to qualify for funds for purses from the Kentucky Harness Racing Commission.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services

Certificate of Need and Licensure Board

902 KAR 20:072. Operation and services; ambulatory care clinics.

The meeting was adjourned at 11:20 a.m. until June 2, 1982, at 10:00 a.m. in Room 103 of the Capitol Annex.

Administrative Register of Kentucky

Cumulative Supplement

Locator Index—Effective Dates ..... M 2

KRS Index ..... M 8

Subject Index to Volume 8 ..... M 13

Locator Index—Effective Dates

NOTE: Emergency regulations expire upon being repealed or replaced.

Volume 7

Emergency Regulation	7 Ky.R. Page No.	Effective Date
103 KAR 35:020E	394	10-6-80
Expired		4-15-82
200 KAR 2:006E	288	9-4-80
Expired		4-15-82
200 KAR 5:308E	395	9-19-80
Replaced		10-7-81
401 KAR 51:016E	293	9-11-80
Expired		4-15-82
401 KAR 51:051E	293	9-11-80
Expired		4-15-82
807 KAR 5:001E	709	3-4-81
Replaced		4-7-82
807 KAR 5:006E	714	3-4-81
Replaced		2-8-82
807 KAR 5:011E	721	3-4-81
Expired		4-15-82
807 KAR 5:016E	725	3-4-81
Replaced		4-7-82
807 KAR 5:021E	726	3-4-81
Replaced		4-7-82
807 KAR 5:026E	735	3-4-81
Replaced		4-7-82
807 KAR 5:031E	737	3-4-81
Replaced		4-7-82
807 KAR 5:036E	738	3-4-81
Expired		4-15-82
807 KAR 5:041E	739	3-4-81
Replaced		4-7-82
807 KAR 5:046E	746	3-4-81
Replaced		4-7-82
807 KAR 5:051E	746	3-4-81
Replaced		4-7-82
807 KAR 5:056E	747	3-4-81
Replaced		4-7-82
807 KAR 5:061E	748	3-4-81
Replaced		4-7-82
807 KAR 5:066E	753	3-4-81
Replaced		4-7-82
807 KAR 5:071E	758	3-4-81
Replaced		4-7-82
815 KAR 20:030E	898	5-1-81
Expired		4-15-82
902 KAR 14:005E	396	10-14-80
Expired		4-15-82
902 KAR 14:015E	397	10-14-80
Expired		4-15-82
902 KAR 20:025E	106	8-8-80
Repealed		4-7-82
902 KAR 20:047E	136	7-24-80
Repealed		4-7-82
902 KAR 20:050E	138	7-24-80
Repealed		4-7-82
902 KAR 20:057E	154	8-8-80
Repealed		4-7-82
902 KAR 20:070E	165	8-8-80
Expired		4-15-82
902 KAR 20:075E	172	8-8-80
Expired		4-15-82
904 KAR 1:020E	587	1-7-81
Replaced	910	7-1-81
904 KAR 1:022E	802	4-1-81
Replaced	857	3-1-82
904 KAR 1:024E	804	4-1-81
Replaced	857	3-1-82
904 KAR 2:007E	897	4-27-81
Replaced		2-1-82

Regulation	7 Ky.R. Page No.	Effective Date
201 KAR 19:025		
Amended	913	9-2-81
201 KAR 19:035		
Amended	913	9-2-81
201 KAR 19:040		
Amended	913	9-2-81
201 KAR 19:045		
Repealed	913	9-2-81
201 KAR 19:085		
Amended	914	9-2-81
401 KAR 59:250	937	
Withdrawn		8-18-81
401 KAR 59:255	939	9-2-81
723 KAR 1:005		
Amended	49	
Withdrawn		9-1-81
807 KAR 5:067	793	9-2-81
810 KAR 1:018		
Amended	256	
Withdrawn		11-21-80
Amended	672	
Rejected	893	4-1-81
Resubmitted		4-23-81
Rejected		5-8-81
815 KAR 7:050	866	
815 KAR 20:030		
Amended	684	
Rejected	See 8 Ky.R.	10-7-81
815 KAR 20:050		
Amended	220	10-1-80
Amended	845	10-7-81
815 KAR 20:141		
Amended	213	8-6-80
Amended	851	
Withdrawn		8-3-81
904 KAR 1:022		
Amended	857	3-1-82
904 KAR 1:024		
Amended	357	11-6-80
Amended	857	3-1-82
904 KAR 1:060		
Amended	580	

Volume 8

Emergency Regulation	8 Ky.R. Page No.	Effective Date
200 KAR 2:006E	1223	4-16-82
301 KAR 2:046E	141	7-31-81
Expired		12-8-81
302 KAR 20:110E	626	12-23-81
Replaced	784	3-1-82
302 KAR 20:120E	626	12-23-81
Replaced	785	3-1-82
303 KAR 1:100E	143	8-5-81
Expired		4-15-82
401 KAR 51:017E	1236	4-16-82
401 KAR 51:052E	1244	4-16-82
405 KAR 1:005E	627	12-29-81
Expired		4-15-82
Resubmitted	1250	5-14-82
405 KAR 3:005E	628	12-29-81
Expired		4-15-82
Resubmitted	1251	5-14-82
405 KAR 7:020E	629	12-29-81
Expired		4-15-82
Resubmitted	1252	5-14-82
405 KAR 7:030E	636	12-29-81
Expired		4-15-82
Resubmitted	1258	5-14-82
405 KAR 7:040E	636	12-29-81
Expired		4-15-82
Resubmitted	1259	5-14-82
405 KAR 7:060E	639	12-29-81
Expired		4-15-82
Resubmitted	1261	5-14-82
405 KAR 7:080E	640	12-29-81
Expired		4-15-82
Resubmitted	1262	5-14-82
405 KAR 7:090E	642	12-29-81
Expired		4-15-82
Resubmitted	1264	5-14-82
405 KAR 7:095E	1270	5-15-82
405 KAR 7:100E	647	12-29-81
Expired		4-15-82
Resubmitted	1272	5-14-82
405 KAR 7:110E	648	12-29-81
Expired		4-15-82
Resubmitted	1272	5-14-82
405 KAR 8:010E	649	12-29-81
Expired		4-15-82
Resubmitted	1273	5-14-82
405 KAR 8:020E	658	12-29-81
Expired		4-15-82
Resubmitted	1283	5-14-82
405 KAR 8:030E	661	12-29-81
Expired		4-15-82
Resubmitted	1285	5-14-82
405 KAR 8:040E	669	12-29-81
Expired		4-15-82
Resubmitted	1293	5-14-82
405 KAR 8:050E	678	12-29-81
Expired		4-15-82
Resubmitted	1302	5-14-82
405 KAR 10:010E	682	12-29-81
Expired		4-15-82
Resubmitted	1306	5-14-82
405 KAR 10:020E	683	12-29-81
Expired		4-15-82
Resubmitted	1307	5-14-82
405 KAR 10:030E	684	12-29-81
Expired		4-15-82
Resubmitted	1308	5-14-82
405 KAR 10:040E	686	12-29-81
Expired		4-15-82
Resubmitted	1310	5-14-82
405 KAR 10:050E	688	12-29-81
Expired		4-15-82
Resubmitted	1312	5-14-82
405 KAR 12:010E	689	12-29-81
Expired		4-15-82
Resubmitted	1313	5-14-82
405 KAR 12:020E	690	12-29-81
Expired		4-15-82
Resubmitted	1314	5-14-82

Emergency Regulation	8 Ky.R. Page No.	Effective Date
405 KAR 12:030E	693	12-29-81
Expired		4-15-82
Resubmitted	1316	5-14-82
405 KAR 16:010E	694	12-29-81
Expired		4-15-82
Resubmitted	1317	5-14-82
405 KAR 16:020E	695	12-29-81
Expired		4-15-82
Resubmitted	1318	5-14-82
405 KAR 16:030E	696	12-29-81
Expired		4-15-82
Resubmitted	1319	5-14-82
405 KAR 16:040E	697	12-29-81
Expired		4-15-82
Resubmitted	1320	5-14-82
405 KAR 16:050E	697	12-29-81
Expired		4-15-82
Resubmitted	1321	5-14-82
405 KAR 16:060E	698	12-29-81
Expired		4-15-82
Resubmitted	1323	5-14-82
405 KAR 16:070E	701	12-29-81
Expired		4-15-82
Resubmitted	1324	5-14-82
405 KAR 16:080E	701	12-29-81
Expired		4-15-82
Resubmitted	1325	5-14-82
405 KAR 16:090E	703	12-29-81
Expired		4-15-82
Resubmitted	1326	5-14-82
405 KAR 16:100E	704	12-29-81
Expired		4-15-82
Resubmitted	1328	5-14-82
405 KAR 16:110E	705	12-29-81
Expired		4-15-82
Resubmitted	1329	5-14-82
405 KAR 16:120E	706	12-29-81
Expired		4-15-82
Resubmitted	1330	5-14-82
405 KAR 16:130E	709	12-29-81
Expired		4-15-82
Resubmitted	1332	5-14-82
405 KAR 16:140E	712	12-29-81
Expired		4-15-82
Resubmitted	1336	5-14-82
405 KAR 16:150E	714	12-29-81
Expired		4-15-82
Resubmitted	1337	5-14-82
405 KAR 16:160E	714	12-29-81
Expired		4-15-82
Resubmitted	1338	5-14-82
405 KAR 16:170E	715	12-29-81
Expired		4-15-82
Resubmitted	1338	5-14-82
405 KAR 16:180E	716	12-29-81
Expired		4-15-82
Resubmitted	1339	5-14-82
405 KAR 16:190E	716	12-29-81
Expired		4-15-82
Resubmitted	1340	5-14-82
405 KAR 16:200E	718	12-29-81
Expired		4-15-82
Resubmitted	1342	5-14-82
405 KAR 16:210E	721	12-29-81
Expired		4-15-82
Resubmitted	1344	5-14-82
405 KAR 16:220E	723	12-29-81
Expired		4-15-82
Resubmitted	1346	5-14-82
405 KAR 16:250E	725	12-29-81
Expired		4-15-82
Resubmitted	1348	5-14-82
405 KAR 18:010E	725	12-29-81
Expired		4-15-82
Resubmitted	1348	5-14-82
405 KAR 18:020E	726	12-29-81
Expired		4-15-82
Resubmitted	1349	5-14-82
405 KAR 18:030E	726	12-29-81
Expired		4-15-82
Resubmitted	1349	5-14-82
405 KAR 18:040E	727	12-29-81
Expired		4-15-82
Resubmitted	1350	5-14-82
405 KAR 18:050E	728	12-29-81
Expired		4-15-82
Resubmitted	1351	5-14-82
405 KAR 18:060E	729	12-29-81
Expired		4-15-82
Resubmitted	1352	5-14-82
405 KAR 18:070E	731	12-29-81
Expired		4-15-82
Resubmitted	1354	5-14-82
405 KAR 18:080E	732	12-29-81
Expired		4-15-82
Resubmitted	1355	5-14-82
405 KAR 18:090E	733	12-29-81
Expired		4-15-82
Resubmitted	1356	5-14-82
405 KAR 18:100E	735	12-29-81
Expired		4-15-82
Resubmitted	1358	5-14-82
405 KAR 18:110E	736	12-29-81
Expired		4-15-82
Resubmitted	1359	5-14-82
405 KAR 18:120E	737	12-29-81
Expired		4-15-82
Resubmitted	1360	5-14-82
405 KAR 18:130E	739	12-29-81
Expired		4-15-82
Resubmitted	1362	5-14-82
405 KAR 18:140E	742	12-29-81
Expired		4-15-82
Resubmitted	1365	5-14-82
405 KAR 18:150E	744	12-29-81
Expired		4-15-82
Resubmitted	1367	5-14-82
405 KAR 18:160E	744	12-29-81
Expired		4-15-82
Resubmitted	1367	5-14-82
405 KAR 18:170E	745	12-29-81
Expired		4-15-82
Resubmitted	1368	5-14-82
405 KAR 18:180E	746	12-29-81
Expired		4-15-82
Resubmitted	1369	5-14-82
405 KAR 18:190E	747	12-29-81
Expired		4-15-82
Resubmitted	1369	5-14-82
405 KAR 18:200E	748	12-29-81
Expired		4-15-82
Resubmitted	1370	5-14-82
405 KAR 18:210E	750	12-29-81
Expired		4-15-82
Resubmitted	1373	5-14-82
405 KAR 18:220E	751	12-29-81
Expired		4-15-82
Resubmitted	1374	5-14-82
405 KAR 18:230E	753	12-29-81
Expired		4-15-82
Resubmitted	1375	5-14-82
405 KAR 18:260E	755	12-29-81
Expired		4-15-82
Resubmitted	1378	5-14-82
405 KAR 20:010E	756	12-29-81
Expired		4-15-82
Resubmitted	1378	5-14-82
405 KAR 20:020E	757	12-29-81
Expired		4-15-82
Resubmitted	1379	5-14-82
405 KAR 20:030E	758	12-29-81
Expired		4-15-82
Resubmitted	1380	5-14-82
405 KAR 20:040E	758	12-29-81
Expired		4-15-82
Resubmitted	1381	5-14-82
405 KAR 20:050E	760	12-29-81
Expired		4-15-82
Resubmitted	1382	5-14-82
405 KAR 20:060E	760	12-29-81
Expired		4-15-82
Resubmitted	1383	5-14-82
405 KAR 20:070E	761	12-29-81
Expired		4-15-82
Resubmitted	1384	5-14-82
405 KAR 20:080E	762	12-29-81
Expired		4-15-82
Resubmitted	1384	5-14-82
405 KAR 24:020E	763	12-29-81
Expired		4-15-82
Resubmitted	1385	5-14-82
405 KAR 24:030E	764	12-29-81
Expired		4-15-82
Resubmitted	1386	5-14-82
405 KAR 24:040E	766	12-29-81
Expired		4-15-82
Resubmitted	1388	5-14-82
603 KAR 5:110E	41	6-30-81
Replaced	13	8-5-81
Resubmitted	1390	4-16-82
807 KAR 5:006E	843	2-8-82
Replaced	1137	4-7-82
902 KAR 14:015E	850	2-3-82
Expired		4-15-82
902 KAR 20:007E		7-24-80
Repealed	493	2-1-82
902 KAR 20:010E		8-8-80
Repealed	580	2-1-82
902 KAR 20:015E		8-8-80
Repealed	596	2-1-82
902 KAR 20:017E		8-8-80
Repealed	219	11-5-81
902 KAR 20:020E		7-24-80
Repealed	376	1-6-82
902 KAR 20:030E		7-24-80
Repealed	227	11-5-81
902 KAR 20:035E		7-24-80
Repealed	222	11-5-81
902 KAR 20:040E		7-24-80
Repealed	232	11-5-81
902 KAR 20:045E		7-24-80
Repealed	391	1-6-82
902 KAR 20:055E		7-24-80
Repealed	234	11-5-81
902 KAR 20:059E		8-8-80
Repealed	412	1-6-82
902 KAR 20:065E		8-8-80
Repealed	240	11-5-81
902 KAR 20:077E		8-8-80
Repealed	414	1-6-82
902 KAR 20:080E		7-24-80
Repealed	243	11-5-81
902 KAR 20:085E		8-8-80
Repealed	606	2-1-82
902 KAR 20:090E		8-8-80
Repealed	418	1-6-82
902 KAR 20:095E		8-8-80
Repealed	418	1-6-82
902 KAR 20:100E		8-8-80
Repealed	245	11-5-81
902 KAR 20:105E		8-8-80
Repealed	251	11-5-81
902 KAR 20:110E		8-8-80
Repealed	254	11-5-81
903 KAR 2:010E	974	2-19-82
Expired		4-15-82
904 KAR 1:003E	263	9-30-81
Repealed	335	10-30-81
904 KAR 1:004E	266	9-16-81
Amended	428	12-14-81
Replaced	527	2-1-82
904 KAR 1:010E	268	9-30-81
Replaced	879	2-1-82
904 KAR 1:011E	335	10-30-81
Amended	430	12-14-81
Replaced	614	2-1-82
904 KAR 1:013E	976	3-1-82
Expired		4-15-82
Resubmitted	1395	4-16-82
904 KAR 1:026E	269	9-30-81
Replaced	531	2-1-82
904 KAR 1:027E	271	9-30-81
Replaced	880	2-1-82
904 KAR 1:033E	43	6-30-81
Replaced	29	8-5-81
904 KAR 1:036E	977	3-2-82
Expired		4-15-82
Resubmitted	1397	4-16-82
904 KAR 1:040E	272	9-30-81
Replaced	881	2-1-82
904 KAR 1:045E	337	10-16-81
Replaced	882	2-1-82

Emergency Regulation	8 Ky.R. Page No.	Effective Date
904 KAR 2:005E	273	9-16-81
Repealed	432	12-14-81
904 KAR 2:006E	432	12-14-81
Replaced	616	2-1-82
904 KAR 2:010E	44	7-1-81
Replaced	31	8-5-81
Amended	276	9-16-81
Repealed	434	12-14-81
904 KAR 2:016E	434	12-14-81
Amended	851	2-3-82
Expired		4-15-82
Resubmitted	1402	4-16-82
904 KAR 2:040E	854	2-3-82
Expired		4-15-82
904 KAR 2:045E	278	9-16-81
Repealed	279	10-8-81
904 KAR 2:046E	279	10-8-81
Replaced	621	2-1-82
904 KAR 2:081E		
Repealed	622	2-1-82
904 KAR 2:088E	144	8-4-81
Repealed	421	1-6-82
904 KAR 2:100E	983	3-2-82
Expired		4-15-82
Resubmitted	1405	4-16-82
904 KAR 3:010E	280	9-30-81
Replaced	535	2-1-82
904 KAR 3:020E	282	9-30-81
Replaced	537	2-1-82
904 KAR 3:030E	284	9-30-81
Replaced	539	2-1-82
904 KAR 3:035E	285	9-30-81
Replaced	540	2-1-82
904 KAR 3:040E	338	10-30-81
Replaced	330	12-2-81
904 KAR 3:045E	855	2-3-82
Replaced	1146	4-7-82
904 KAR 3:050E	286	9-30-81
Replaced	541	2-1-82
904 KAR 3:060E	146	7-16-81
Replaced	83	12-2-81
904 KAR 5:030E	1408	4-16-82
Amended	1409	5-14-82

Regulation	8 Ky.R. Page No.	Effective Date
12 KAR 1:020		
Amended	778	3-1-82
12 KAR 1:105		
Amended	778	3-1-82
31 KAR 1:020		
Amended	1	6-3-81
45 KAR 1:010		
Repealed	341	11-5-81
45 KAR 1:020	207	
Amended	341	11-5-81
101 KAR 1:050		
Repealed	1072	5-5-82
101 KAR 1:055	1072	5-5-82
101 KAR 1:090		
Amended	988	5-5-82
101 KAR 1:110		
Amended	989	5-5-82
101 KAR 1:140		
Amended	990	
Rejected	1602	5-5-82
101 KAR 1:200		
Amended	994	
Rejected	1602	5-5-82
102 KAR 1:057		
Amended	779	3-1-82
102 KAR 1:190	784	3-1-82
102 KAR 1:195	784	3-1-82
103 KAR 1:030	1460	
103 KAR 8:090		
Amended	68	9-2-81
103 KAR 16:140		
Repealed	175	10-7-81
103 KAR 16:141	175	10-7-81
103 KAR 18:030		
Amended	153	10-7-81
105 KAR 1:010		
Amended	494	2-1-82

Regulation	8 Ky.R. Page No.	Effective Date
105 KAR 1:030		
Repealed	542	2-1-82
105 KAR 1:040		
Amended	497	2-1-82
105 KAR 1:050		
Repealed	542	2-1-82
105 KAR 1:060		
Repealed	542	2-1-82
105 KAR 1:061	542	2-1-82
105 KAR 1:070	542	5-5-82
106 KAR 1:020		
Amended	1	6-3-81
108 KAR 1:010		
Amended	6	
Amended	148	8-5-81
Reprinted	259	
200 KAR 2:006	997	5-5-82
200 KAR 4:005		
Amended	3	6-3-81
200 KAR 5:302		
Repealed	1076	5-5-82
200 KAR 5:308		
Amended	153	10-7-81
200 KAR 5:320	1076	5-5-82
200 KAR 6:030		
Repealed	193	11-5-81
200 KAR 6:035		
Amended	193	11-5-81
200 KAR 9:010		
Amended	999	5-5-82
201 KAR 1:045		
Amended	910	4-7-82
201 KAR 2:050		
Amended	154	10-7-81
201 KAR 9:095	374	
Withdrawn		1-26-82
201 KAR 11:015		
Repealed	784	3-1-82
201 KAR 11:016	784	3-1-82
201 KAR 11:045		
Amended	780	4-7-82
201 KAR 16:020		
Amended	347	
Withdrawn		12-10-81
Amended	499	
Amended	857	2-1-82
201 KAR 16:030		
Amended	500	2-1-82
201 KAR 16:040		
Amended	501	2-1-82
201 KAR 16:050		
Amended	1001	5-5-82
201 KAR 18:040		
Amended	194	
Amended	343	11-5-81
201 KAR 20:057	33	8-5-81
201 KAR 20:070		
Amended	780	3-1-82
201 KAR 20:110		
Amended	781	3-1-82
201 KAR 20:120		
Repealed	780	3-1-82
201 KAR 20:130		
Repealed	780	3-1-82
201 KAR 23:030		
Amended	154	10-7-81
201 KAR 23:050		
Amended	155	10-7-81
201 KAR 23:070		
Amended	155	12-2-81
301 KAR 1:055		
Amended	323	12-2-81
301 KAR 1:075		
Amended	502	
Amended	858	2-1-82
301 KAR 1:085		
Amended	1153	
301 KAR 1:122		
Amended	1154	
301 KAR 1:130		
Amended	1154	
301 KAR 1:140		
Amended	1155	
301 KAR 1:145		
Amended	195	11-5-81

Regulation	8 Ky.R. Page No.	Effective Date
301 KAR 2:045		
Amended	1001	5-5-82
301 KAR 2:047		
Amended	4	6-3-81
Amended	1156	
301 KAR 2:050		
Amended	1158	
301 KAR 2:085		
Repealed	209	11-5-81
301 KAR 2:086	209	11-5-81
301 KAR 2:111		
Amended	1159	
301 KAR 2:112		
Repealed	1076	5-5-82
301 KAR 2:115	1076	5-5-82
301 KAR 3:053		
Amended	503	2-1-82
302 KAR 1:040	212	11-5-81
302 KAR 1:050	213	11-5-81
302 KAR 20:010		
Amended	157	10-7-81
302 KAR 20:110	784	3-1-82
302 KAR 20:120	785	3-1-82
303 KAR 1:100	1197	
401 KAR 2:050		
Amended	158	
Amended	441	
Amended	859	2-1-82
Amended	1002	
401 KAR 2:055		
Amended	163	
Amended	447	
Amended	865	2-1-82
401 KAR 2:060		
Amended	505	
Withdrawn		3-2-82
Amended	1008	
401 KAR 2:063	542	
Withdrawn		3-2-82
Resubmitted	1078	
401 KAR 2:070		
Amended	508	
Withdrawn		3-2-82
Amended	1025	
401 KAR 2:073	572	
Withdrawn		3-2-82
Resubmitted	1108	
401 KAR 2:075		
Amended	513	
Withdrawn		3-2-82
Amended	1030	
401 KAR 2:090	175	
Amended	450	2-1-82
401 KAR 2:095	176	
Amended	452	
Amended	869	2-1-82
401 KAR 2:101	179	
Amended	456	
Amended	985	3-1-82
401 KAR 2:105	181	
Amended	458	2-1-82
401 KAR 2:111	181	
Amended	459	2-1-82
401 KAR 2:170	1110	
401 KAR 6:060	1197	
401 KAR 50:010		
Amended	1420	
401 KAR 50:015		
Amended	1035	
401 KAR 50:035		
Amended	1037	
401 KAR 50:055		
Amended	1041	
401 KAR 51:010		
Amended	1044	
401 KAR 51:017	1112	
401 KAR 51:052	1120	
401 KAR 51:055	1125	
401 KAR 59:005		
Amended	1422	
401 KAR 59:010		
Amended	1425	
401 KAR 59:018		
Amended	1046	

Regulation	8 Ky.R. Page No.	Effective Date
401 KAR 59:101		
Amended	1049	
401 KAR 59:105		
Amended	517	
Amended	883	4-7-82
401 KAR 59:175		
Amended	1050	
401 KAR 59:210		
Amended	910	
401 KAR 59:212		
Amended	912	
401 KAR 61:005		
Amended	1427	
401 KAR 61:015		
Amended	1431	
401 KAR 61:020		
Amended	1437	
401 KAR 61:035		
Amended	518	
Amended	884	4-7-82
401 KAR 61:055		
Amended	1051	
401 KAR 61:056		
Amended	1052	
401 KAR 61:075		
Amended	1438	
401 KAR 61:085		
Amended	1054	
401 KAR 61:120		
Amended	913	
401 KAR 61:122		
Amended	915	
401 KAR 61:132		
Amended	7	
Amended	318	12-2-81
401 KAR 61:140		
Amended	1441	
401 KAR 61:165		
Amended	164	11-5-81
401 KAR 63:010		
Amended	1443	
401 KAR 63:030	86	
Withdrawn		11-30-81
401 KAR 63:031	1129	
405 KAR 1:005	1460	
405 KAR 3:005	1461	
405 KAR 7:020	1462	
405 KAR 7:030	1468	
405 KAR 7:040	1469	
405 KAR 7:060	1471	
405 KAR 7:080	1472	
405 KAR 7:090	1475	
405 KAR 7:095	1480	
405 KAR 7:100	1482	
405 KAR 7:110	1482	
405 KAR 8:010	1483	
405 KAR 8:020	1492	
405 KAR 8:030	1494	
405 KAR 8:040	1503	
405 KAR 8:050	1511	
405 KAR 10:010	1515	
405 KAR 10:020	1517	
405 KAR 10:030	1518	
405 KAR 10:040	1519	
405 KAR 10:050	1521	
405 KAR 12:010	1522	
405 KAR 12:020	1523	
405 KAR 12:030	1526	
405 KAR 16:010	1527	
405 KAR 16:020	1528	
405 KAR 16:030	1529	
405 KAR 16:040	1529	
405 KAR 16:050	1530	
405 KAR 16:060	1531	
405 KAR 16:070	1533	
405 KAR 16:080	1534	
405 KAR 16:090	1535	
405 KAR 16:100	1537	
405 KAR 16:110	1538	
405 KAR 16:120	1538	
405 KAR 16:130	1541	
405 KAR 16:140	1545	
405 KAR 16:150	1546	
405 KAR 16:160	1547	

Regulation	8 Ky.R. Page No.	Effective Date
405 KAR 16:170	1547	
405 KAR 16:180	1548	
405 KAR 16:190	1549	
405 KAR 16:200	1551	
405 KAR 16:210	1553	
405 KAR 16:220	1554	
405 KAR 16:250	1557	
405 KAR 18:010	1557	
405 KAR 18:020	1558	
405 KAR 18:030	1558	
405 KAR 18:040	1559	
405 KAR 18:050	1560	
405 KAR 18:060	1561	
405 KAR 18:070	1563	
405 KAR 18:080	1564	
405 KAR 18:090	1565	
405 KAR 18:100	1566	
405 KAR 18:110	1567	
405 KAR 18:120	1568	
405 KAR 18:130	1571	
405 KAR 18:140	1574	
405 KAR 18:150	1576	
405 KAR 18:160	1576	
405 KAR 18:170	1577	
405 KAR 18:180	1577	
405 KAR 18:190	1578	
405 KAR 18:200	1579	
405 KAR 18:210	1582	
405 KAR 18:220	1583	
405 KAR 18:230	1584	
405 KAR 18:260	1586	
405 KAR 20:010	1587	
405 KAR 20:020	1588	
405 KAR 20:030	1589	
405 KAR 20:040	1590	
405 KAR 20:050	1591	
405 KAR 20:060	1591	
405 KAR 20:070	1592	
405 KAR 20:080	1593	
405 KAR 24:020	1594	
405 KAR 24:030	1595	
405 KAR 24:040	1597	
405 KAR 30:010	87	
Amended	460	3-1-82
405 KAR 30:020	91	
Amended	465	3-1-82
405 KAR 30:025	573	
Amended	1411	
405 KAR 30:030	92	
Withdrawn		12-13-81
405 KAR 30:035	574	
Amended	1412	
405 KAR 30:040	93	
Amended	467	3-1-82
405 KAR 30:050	575	
405 KAR 30:060	94	
Amended	468	3-1-82
405 KAR 30:070	95	
Amended	469	3-1-82
405 KAR 30:080	96	3-1-82
405 KAR 30:090	96	
Amended	470	3-1-82
405 KAR 30:100	97	
Amended	471	3-1-82
405 KAR 30:110	98	3-1-82
405 KAR 30:120	98	
Withdrawn		12-14-81
405 KAR 30:121	576	
405 KAR 30:125	578	
405 KAR 30:130	100	
Amended	472	
Amended	873	2-1-82
405 KAR 30:140	105	3-1-82
405 KAR 30:150	106	3-1-82
405 KAR 30:160	106	
Withdrawn		12-13-81
405 KAR 30:170	108	
Amended	477	3-1-82
405 KAR 30:180	109	3-1-82
405 KAR 30:190	110	
Amended	478	3-1-82
405 KAR 30:200	111	3-1-82
405 KAR 30:210	112	
Amended	479	3-1-82

Regulation	8 Ky.R. Page No.	Effective Date
405 KAR 30:220	113	3-1-82
405 KAR 30:230	114	3-1-82
405 KAR 30:240	114	3-1-82
405 KAR 30:250	115	3-1-82
405 KAR 30:260	117	3-1-82
405 KAR 30:270	118	3-1-82
405 KAR 30:280	119	
Amended	480	3-1-82
405 KAR 30:290	122	
Amended	483	3-1-82
405 KAR 30:300	123	3-1-82
405 KAR 30:310	124	
Amended	485	3-1-82
405 KAR 30:320	125	
Amended	486	3-1-82
405 KAR 30:330	127	
Amended	488	3-1-82
405 KAR 30:340	128	
Amended	489	3-1-82
405 KAR 30:350	128	3-1-82
405 KAR 30:360	130	
Withdrawn		12-14-81
405 KAR 30:370	130	
Withdrawn		12-14-81
405 KAR 30:380	132	
Withdrawn		12-14-81
405 KAR 30:390	133	
Amended	489	3-1-82
405 KAR 30:400	134	
Amended	490	3-1-82
405 KAR 30:410	136	3-1-82
601 KAR 1:010		
Repealed	12	8-5-81
601 KAR 1:090		
Amended	68	9-2-81
Amended	917	4-7-82
601 KAR 20:070		
Amended	195	
Rejected	968	2-1-82
602 KAR 20:020		
Amended	9	8-5-81
603 KAR 3:010		
Amended	9	
Withdrawn		8-3-81
Amended	519	
603 KAR 5:070		
Amended	12	8-5-81
Amended	782	3-1-82
603 KAR 5:096		
Amended	348	1-6-82
Amended	783	3-1-82
Amended	918	4-7-82
603 KAR 5:115	952	4-7-82
603 KAR 5:110		
Amended	13	8-5-81
702 KAR 4:010		
Amended	324	12-2-81
702 KAR 4:020		
Amended	324	12-2-81
702 KAR 4:040		
Amended	325	12-2-81
702 KAR 4:060		
Amended	326	12-2-81
702 KAR 4:070		
Amended	328	12-2-81
702 KAR 4:090		
Amended	329	12-2-81
704 KAR 3:005		
Amended	166	10-7-81
704 KAR 3:025		
Amended	69	9-2-81
704 KAR 3:052		
Amended	71	9-2-81
704 KAR 3:280		
Repealed	183	11-5-81
704 KAR 3:281	183	11-5-81
704 KAR 3:290		
Amended	1161	
704 KAR 3:292		
Amended	1162	
704 KAR 3:300		
Repealed	137	9-2-81
704 KAR 3:301	137	9-2-81
704 KAR 3:304		
Amended	15	8-5-81

Regulation	8 Ky.R. Page No.	Effective Date
704 KAR 4:010		
Amended	71	9-2-81
704 KAR 4:020		
Amended	15	
Withdrawn		9-24-81
Amended	1162	
704 KAR 5:050		
Amended	166	
Withdrawn		11-10-81
Amended	349	1-6-82
704 KAR 10:022		
Amended	17	8-5-81
Amended	918	4-7-82
704 KAR 15:090	1599	
704 KAR 20:005		
Amended	17	8-5-81
Amended	167	10-7-81
704 KAR 20:120		
Amended	1164	
704 KAR 20:210		
Amended	1165	
704 KAR 20:229		
Amended	72	9-2-81
704 KAR 20:230		
Amended	72	9-2-81
704 KAR 20:235		
Amended	73	9-2-81
704 KAR 20:245		
Amended	74	9-2-81
704 KAR 20:255		
Amended	75	9-2-81
705 KAR 1:010		
Amended	18	8-5-81
705 KAR 7:020		
Amended	350	1-6-82
705 KAR 7:050		
Amended	1165	
707 KAR 1:090	952	4-7-82
707 KAR 1:100	953	
707 KAR 1:110	1200	
723 KAR 1:005		
Amended	522	
803 KAR 1:088		
Repealed	196	11-5-81
803 KAR 1:090		
Amended	196	11-5-81
803 KAR 2:010		
Amended	1444	
803 KAR 2:015		
Amended	919	4-7-82
803 KAR 2:020		
Amended	167	10-7-81
Amended	350	1-6-82
Amended	921	4-7-82
Amended	1446	
803 KAR 2:027		
Amended	1449	
803 KAR 2:030		
Amended	354	1-6-82
Amended	1450	
803 KAR 2:032		
Amended	171	10-7-81
Amended	1456	
804 KAR 1:010		
Repealed	438	12-2-81
804 KAR 1:020		
Repealed	438	12-2-81
804 KAR 1:030		
Amended	198	12-2-81
804 KAR 1:040		
Repealed	438	12-2-81
804 KAR 1:100	214	
Amended	437	12-2-81
804 KAR 1:101	215	
Amended	438	12-2-81
804 KAR 2:015		
Amended	199	12-2-81
804 KAR 2:025		
Repealed	438	12-2-81
804 KAR 3:070		
Repealed	438	12-2-81
804 KAR 4:100		
Amended	356	1-6-82
804 KAR 4:220	215	
Amended	768	1-6-82
804 KAR 5:060		
Amended	199	
Withdrawn		9-15-81
804 KAR 6:010		
Amended	200	12-2-81
804 KAR 9:010		
Amended	18	10-7-81
805 KAR 4:010		
Amended	171	
Amended	287	10-7-81
805 KAR 5:010		
Amended	356	1-6-82
806 KAR 2:020		
Amended	925	4-7-82
806 KAR 9:010		
Repealed	954	4-7-82
806 KAR 9:011	954	4-7-82
806 KAR 9:070		
Amended	926	4-7-82
806 KAR 9:090		
Repealed	1130	5-5-82
806 KAR 9:091	1130	5-5-82
806 KAR 9:170	954	4-7-82
806 KAR 12:070	1130	
Amended	1413	
806 KAR 17:060		
Amended	1055	
Amended	1413	
806 KAR 17:070	955	4-7-82
806 KAR 26:010		
Amended	926	4-7-82
806 KAR 38:060	959	
Amended	1410	5-5-82
806 KAR 39:060		
Amended	1166	
807 KAR 5:001	786	4-7-82
807 KAR 5:006	791	
Reprint	961	
Amended	1137	4-16-82
Amended	932	
807 KAR 5:011	797	
Amended	1148	
807 KAR 5:016	802	4-7-82
807 KAR 5:021	803	4-7-82
807 KAR 5:026	811	4-7-82
807 KAR 5:031	813	4-7-82
807 KAR 5:041	814	4-7-82
807 KAR 5:046	821	4-7-82
807 KAR 5:051	822	4-7-82
807 KAR 5:054	216	
Amended	837	4-7-82
807 KAR 5:056	822	4-7-82
807 KAR 5:061	823	4-7-82
807 KAR 5:066	828	4-7-82
807 KAR 5:071	833	4-7-82
807 KAR 5:076	835	4-7-82
808 KAR 1:060		
Amended	19	8-5-81
808 KAR 1:080	34	8-5-81
808 KAR 2:030	137	9-2-81
808 KAR 3:030		
Amended	20	8-5-81
Amended	202	11-5-81
808 KAR 4:020	479	
Amended	987	3-1-82
808 KAR 7:020	34	
Withdrawn		8-5-81
808 KAR 7:030	183	10-7-81
808 KAR 8:010	138	9-2-81
808 KAR 10:010		
Amended	523	
Amended	879	2-1-82
808 KAR 10:150	35	
Amended	149	8-5-81
Amended	1456	
808 KAR 10:160	183	10-7-81
808 KAR 10:170	184	10-7-81
808 KAR 10:190	185	10-7-81
Amended	524	2-1-82
808 KAR 10:200	579	3-1-82
810 KAR 1:013		
Amended	202	11-5-81
810 KAR 1:018		
Amended	525	4-7-82
811 KAR 1:025		
Amended	1167	
811 KAR 1:032		
Amended	1167	
811 KAR 1:125		
Amended	1168	
811 KAR 1:130		
Amended	1060	5-5-82
811 KAR 1:135		
Amended	1061	5-5-82
811 KAR 1:180		
Amended	1062	
Amended	1173	
811 KAR 1:190		
Amended	1062	5-5-82
811 KAR 1:200		
Amended	204	11-5-81
811 KAR 1:205	1131	5-5-82
815 KAR 4:010		
Amended	1174	
815 KAR 7:020		
Amended	356	1-6-82
815 KAR 7:030		
Amended	359	1-6-82
815 KAR 7:050		
Amended	46	
Amended	296	
Rejected	424	11-5-81
Resubmitted		11-6-81
Rejected		11-29-81
815 KAR 7:060	1202	
815 KAR 20:030		
Rejected	333	10-7-81
Resubmitted		1-9-82
Filed		4-15-82
Amended	359	
Rejected	840	1-6-82
815 KAR 20:060		
Amended	359	1-6-82
815 KAR 20:070		
Amended	361	
Amended	769	1-6-82
815 KAR 20:130		
Amended	362	1-6-82
815 KAR 20:160		
Amended	365	
Amended	770	1-6-82
815 KAR 20:191		
Amended	367	1-6-82
815 KAR 25:020		
Amended	287	10-7-81
902 KAR 3:010		
Amended	1458	
902 KAR 4:020		
Amended	938	
Amended	1152	
902 KAR 8:010		
Amended	21	
Rejected	187	8-5-81
Amended	191	9-2-81
902 KAR 13:030		
Amended	22	8-5-81
902 KAR 20:006		
Amended	22	8-5-81
902 KAR 20:007		
Repealed	493	2-1-82
902 KAR 20:008	218	
Amended	493	2-1-82
902 KAR 20:009	580	2-1-82
902 KAR 20:010		
Repealed	580	2-1-82
902 KAR 20:012	36	
Amended	150	8-5-81
902 KAR 20:015		
Repealed	596	2-1-82
902 KAR 20:016	596	2-1-82
902 KAR 20:018	219	11-5-81
902 KAR 20:020		
Repealed	376	1-6-82
902 KAR 20:021	376	1-6-82
902 KAR 20:025		
Repealed	855	4-7-82
902 KAR 20:026	383	
Amended	885	4-7-82
902 KAR 20:031	222	11-5-81
902 KAR 20:036	227	11-5-81
902 KAR 20:041	232	11-5-81

Regulation	8 Ky.R. Page No.	Effective Date
902 KAR 20:045		
Repealed	391	1-6-82
902 KAR 20:046	391	1-6-82
902 KAR 20:047		
Repealed	892	4-7-82
902 KAR 20:048	398	
Amended	892	4-7-82
902 KAR 20:050		
Repealed	900	4-7-82
902 KAR 20:051	406	
Amended	900	4-7-82
902 KAR 20:054	604	
Amended	906	4-7-82
902 KAR 20:056	234	11-5-81
902 KAR 20:057		
Repealed	906	4-7-82
902 KAR 20:058	412	1-6-82
902 KAR 20:059		
Repealed	412	1-6-82
902 KAR 20:066	240	11-5-81
902 KAR 20:070		
Repealed	1131	5-5-82
902 KAR 20:072	1131	5-5-82
902 KAR 20:075		
Repealed	1131	5-5-82
902 KAR 20:077		
Repealed	414	1-6-82
902 KAR 20:078	414	1-6-82
902 KAR 20:081	243	11-5-81
902 KAR 20:085		
Repealed	606	2-1-82
902 KAR 20:086	606	2-1-82
902 KAR 20:090		
Repealed	418	1-6-82
902 KAR 20:091	418	1-6-82
902 KAR 20:095		
Repealed	418	1-6-82
902 KAR 20:101	245	11-5-81
Amended	1174	
902 KAR 20:106	251	11-5-81
902 KAR 20:111	254	11-5-81
902 KAR 20:115		
Amended	27	
Amended	320	12-2-81
902 KAR 20:120	36	
Amended	322	12-2-81
902 KAR 20:135	255	3-1-82
Amended	1144	4-7-82
902 KAR 20:140	255	
Amended	908	4-7-82
902 KAR 20:145	420	1-6-82
902 KAR 25:010	1224	
902 KAR 50:040		
Amended	172	
Amended	343	11-5-81
902 KAR 55:010	1181	
Reprint	1601	
903 KAR 2:010	1226	
904 KAR 1:003		
Amended	75	9-2-81
Replaced	263	9-30-81
Repealed	335	10-30-81
904 KAR 1:004		
Amended	527	2-1-82
Amended	1181	
904 KAR 1:008	138	9-2-81
904 KAR 1:010		
Amended	530	
Amended	879	2-1-82
904 KAR 1:011	614	2-1-82
Amended	1184	
904 KAR 1:012		
Amended	939	
904 KAR 1:013		
Amended	1063	
904 KAR 1:026		
Amended	531	2-1-82
904 KAR 1:027		
Amended	532	
Amended	880	2-1-82
904 KAR 1:033		
Amended	29	8-5-81
904 KAR 1:036		
Amended	1064	
904 KAR 1:040		
Amended	77	9-2-81
Replaced	272	9-30-81
Amended	533	
Amended	881	2-1-82
904 KAR 1:044		
Amended	205	11-5-81
904 KAR 1:045		
Amended	534	
Amended	882	2-1-82
904 KAR 1:049		
Amended	329	12-2-81
904 KAR 1:054		
Amended	30	8-5-81
904 KAR 1:080	257	11-5-81
Amended	1186	
904 KAR 1:082	257	11-5-81
Amended	1187	
904 KAR 1:084	258	
Amended	346	11-5-81
Amended	940	4-7-82
904 KAR 1:090	186	
Withdrawn		4-19-82
904 KAR 2:005		
Amended	151	
Withdrawn		9-15-81
Repealed	432	12-14-81
904 KAR 2:006	616	2-1-82
Amended	941	
Withdrawn		3-10-82
Amended	1187	
904 KAR 2:007	618	2-1-82
904 KAR 2:008		
Repealed	618	2-1-82
904 KAR 2:010		
Amended	31	8-5-81
Repealed	434	12-14-81
904 KAR 2:016	618	
Withdrawn		1-25-82
Amended	943	
Withdrawn		3-2-82
Amended	1228	
904 KAR 2:020		
Amended	946	
Amended	1144	4-7-82
904 KAR 2:035		
Amended	1189	
904 KAR 2:040		
Amended	948	
Withdrawn		3-10-82
Amended	1190	
904 KAR 2:045		
Repealed	279	10-8-81
904 KAR 2:046	621	2-1-82
Amended	1191	
904 KAR 2:050		
Amended	535	2-1-82
Amended	1192	
904 KAR 2:055		
Amended	1193	
904 KAR 2:081		
Repealed	622	2-1-82
904 KAR 2:082	622	2-1-82
904 KAR 2:088		
Repealed	421	1-6-82
904 KAR 2:100	421	
Amended	772	1-6-82
Amended	1069	
Withdrawn		3-16-82
Amended	1195	
904 KAR 2:110	1600	
904 KAR 3:010		
Amended	79	9-2-81
Replaced	280	9-30-81
Amended	535	2-1-82
Amended	949	4-7-82
904 KAR 3:020		
Amended	80	9-2-81
Replaced	282	9-30-81
Amended	537	2-1-82
904 KAR 3:030		
Amended	539	2-1-82
904 KAR 3:035		
Amended	82	
Amended	192	9-2-81
Replaced	285	9-30-81
Amended	540	2-1-82
Amended	950	4-7-82
904 KAR 3:040		
Amended	330	12-2-81
Repealed	950	4-7-82
904 KAR 3:045	959	
Amended	1146	
904 KAR 3:050		
Amended	541	2-1-82
904 KAR 3:060		
Amended	83	
Amended	438	12-2-81
904 KAR 3:070		
Amended	371	
Amended	774	1-6-82
904 KAR 3:080	258	11-5-81
904 KAR 5:030		
Amended	1459	
904 KAR 5:240	423	
Amended	776	1-6-82

KRS Index

KRS Section	Regulation
16.505 to 16.652	105 KAR 1:010
	105 KAR 1:040
	105 KAR 1:061
	105 KAR 1:070
18.110	101 KAR 1:090
	101 KAR 1:110
18.140	101 KAR 1:090
18.170	101 KAR 1:055
	101 KAR 1:140
18.190	101 KAR 1:055
	101 KAR 1:110
	101 KAR 1:140
18.210	101 KAR 1:055
	101 KAR 1:090
	101 KAR 1:110
	101 KAR 1:140
18.220	101 KAR 1:110
	101 KAR 1:200
18.240	101 KAR 1:055
18.250	101 KAR 1:090
18.270	101 KAR 1:110
39.480	106 KAR 1:020
Chapter 42	200 KAR 2:006
	200 KAR 9:010
42.450	200 KAR 4:005
42.455	603 KAR 5:115
42.495	200 KAR 4:005
43.070	45 KAR 1:020
Chapter 44	200 KAR 2:006
44.070	108 KAR 1:010
44.080	108 KAR 1:010
44.086	108 KAR 1:010
44.090	108 KAR 1:010
Chapter 45	200 KAR 2:006
Chapter 56	200 KAR 6:035
	200 KAR 5:308
61.510 to 61.702	105 KAR 1:010
	105 KAR 1:040
	105 KAR 1:061
	105 KAR 1:070
61.870 to 61.884	405 KAR 30:021
	405 KAR 30:150
64.810	45 KAR 1:020
76.005 to 76.420	103 KAR 1:030
78.510 to 78.852	105 KAR 1:010
	105 KAR 1:040
	105 KAR 1:061
	105 KAR 1:070
107.600	103 KAR 1:030
107.610	103 KAR 1:030
116.045	31 KAR 1:020
117.085	31 KAR 1:020
136.130	103 KAR 8:090
141.200	103 KAR 16:141
141.205	103 KAR 16:141
141.330	103 KAR 18:030
150.010	301 KAR 1:075
	301 KAR 1:130
	301 KAR 1:140
	301 KAR 1:145
150.025	301 KAR 1:055
	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:122
	301 KAR 1:130
	301 KAR 1:140
	301 KAR 1:145
	301 KAR 2:047
	301 KAR 2:050
	301 KAR 2:086
	301 KAR 2:111
	301 KAR 2:115
	301 KAR 3:053
150.110	301 KAR 1:085
150.120	301 KAR 1:140
	301 KAR 1:145
150.170	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:130
	301 KAR 1:140

KRS Section	Regulation
150.170	301 KAR 1:145
	301 KAR 2:047
	301 KAR 2:050
	301 KAR 2:086
	301 KAR 2:111
	301 KAR 2:115
150.175	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:122
	301 KAR 1:130
	301 KAR 1:140
	301 KAR 1:145
	301 KAR 2:047
	301 KAR 2:086
	301 KAR 2:111
	301 KAR 3:053
150.176	301 KAR 2:047
	301 KAR 2:050
	301 KAR 2:115
	301 KAR 3:053
150.180	301 KAR 1:122
150.190	301 KAR 1:085
	301 KAR 1:122
	301 KAR 1:140
150.235	301 KAR 1:075
	301 KAR 2:086
150.250	301 KAR 2:050
150.300	301 KAR 2:045
150.305	301 KAR 2:045
	301 KAR 2:086
	301 KAR 2:111
	301 KAR 2:115
	301 KAR 3:053
150.330	301 KAR 2:045
	301 KAR 2:047
	301 KAR 2:086
	301 KAR 2:111
	301 KAR 2:115
	301 KAR 3:053
150.340	301 KAR 1:075
	301 KAR 1:130
	301 KAR 2:045
	301 KAR 2:047
	301 KAR 2:086
	301 KAR 2:111
	301 KAR 2:115
	301 KAR 3:053
150.360	301 KAR 2:045
	301 KAR 2:047
	301 KAR 2:050
	301 KAR 2:086
	301 KAR 2:111
	301 KAR 2:115
150.365	301 KAR 2:045
	301 KAR 3:053
150.370	301 KAR 2:045
	301 KAR 2:047
	301 KAR 2:111
	301 KAR 2:115
150.390	301 KAR 2:045
	301 KAR 2:111
	301 KAR 2:115
	301 KAR 3:053
150.400	301 KAR 2:045
	301 KAR 2:115
150.440	301 KAR 1:075
150.445	301 KAR 1:075
	301 KAR 1:145
150.450	301 KAR 1:130
	301 KAR 1:140
	301 KAR 1:145
150.470	301 KAR 1:055
150.510	301 KAR 1:085
150.520	301 KAR 1:085
150.640	301 KAR 2:050
150.990	301 KAR 1:055
151.100	405 KAR 30:350
151.250	405 KAR 30:020
	405 KAR 30:330

KRS Section	Regulation
156.030	704 KAR 3:290
	704 KAR 3:292
156.035	704 KAR 3:290
	704 KAR 3:292
	705 KAR 7:050
156.070	704 KAR 5:050
	705 KAR 7:020
	705 KAR 7:050
156.095	704 KAR 3:281
156.112	705 KAR 1:010
	705 KAR 7:050
156.160	702 KAR 4:040
	702 KAR 4:060
	702 KAR 4:070
	702 KAR 4:090
	704 KAR 3:304
	704 KAR 4:010
	704 KAR 4:020
	704 KAR 10:022
156.485	704 KAR 7:020
156.611	704 KAR 15:090
157.312	704 KAR 5:050
157.315	704 KAR 5:050
157.320	704 KAR 3:052
157.360	704 KAR 3:025
	704 KAR 3:052
	704 KAR 3:301
	704 KAR 5:050
157.420	702 KAR 4:010
158.030	704 KAR 5:050
158.070	704 KAR 3:281
158.090	704 KAR 5:050
158.150	704 KAR 3:052
158.650 to 158.740	704 KAR 3:005
160.476	702 KAR 4:090
161.020	704 KAR 20:005
	704 KAR 20:120
	704 KAR 20:229
	704 KAR 20:230
	704 KAR 20:235
	704 KAR 20:245
	704 KAR 20:255
161.025	704 KAR 20:005
	704 KAR 20:210
	704 KAR 20:229
	704 KAR 20:230
	704 KAR 20:235
	704 KAR 20:245
	704 KAR 20:255
161.030	704 KAR 20:005
	704 KAR 20:120
	704 KAR 20:210
	704 KAR 20:229
	704 KAR 20:230
	704 KAR 20:235
	704 KAR 20:245
	704 KAR 20:255
161.100	704 KAR 20:120
	704 KAR 20:210
161.430	102 KAR 1:190
161.507	102 KAR 1:057
161.560	102 KAR 1:195
162.010	702 KAR 4:090
162.060	702 KAR 4:020
	702 KAR 4:040
	702 KAR 4:060
	702 KAR 4:070
162.070	702 KAR 4:060
	702 KAR 4:070
163.020	705 KAR 1:010
163.030	705 KAR 1:010
167.150	707 KAR 1:090
	707 KAR 1:100
	707 KAR 1:110
167.170	707 KAR 1:090
177.830-177.890	603 KAR 3:010
183.090	602 KAR 20:020
189.222	603 KAR 5:070
	603 KAR 5:096
190.030	601 KAR 20:070
190.035	601 KAR 20:070

KRS Section	Regulation
194.010	903 KAR 2:010
194.025	902 KAR 25:010
194.050	902 KAR 25:010
	903 KAR 2:010
	904 KAR 2:100
	904 KAR 2:110
	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:030
	904 KAR 3:035
	904 KAR 3:045
	904 KAR 3:050
	904 KAR 3:060
	904 KAR 3:070
	904 KAR 3:080
Chapter 198B	815 KAR 7:020
	815 KAR 7:030
	815 KAR 7:050
	815 KAR 7:060
205.010	904 KAR 2:006
	904 KAR 2:016
205.200	904 KAR 2:006
	904 KAR 2:016
	904 KAR 2:035
	904 KAR 2:040
	904 KAR 2:046
	904 KAR 2:050
205.210	904 KAR 2:016
205.215	904 KAR 2:007
205.231	904 KAR 2:055
205.245	904 KAR 2:035
	904 KAR 2:046
205.520	904 KAR 1:004
	904 KAR 1:008
	904 KAR 1:011
	904 KAR 1:012
	904 KAR 1:013
	904 KAR 1:026
	904 KAR 1:027
	904 KAR 1:036
	904 KAR 1:040
	904 KAR 1:044
	904 KAR 1:045
	904 KAR 1:049
	904 KAR 1:054
	904 KAR 1:080
	904 KAR 1:082
	904 KAR 1:084
	904 KAR 2:035
205.560	904 KAR 1:010
205.795	904 KAR 2:020
205.810	904 KAR 2:082
211.180	902 KAR 4:020
211.960-211.968	902 KAR 13:030
211.990	902 KAR 13:030
Chapter 212	902 KAR 8:010
216B.010-216B.130	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:009
	902 KAR 20:012
	902 KAR 20:016
	902 KAR 20:018
	902 KAR 20:021
	902 KAR 20:026
	902 KAR 20:031
	902 KAR 20:036
	902 KAR 20:041
	902 KAR 20:046
	902 KAR 20:048
	902 KAR 20:051
	902 KAR 20:054
	902 KAR 20:056
	902 KAR 20:058
	902 KAR 20:066
	902 KAR 20:072
	902 KAR 20:078
	902 KAR 20:081
	902 KAR 20:091
	902 KAR 20:101
	902 KAR 20:106
	902 KAR 20:111
	902 KAR 20:115
	902 KAR 20:120
	902 KAR 20:135
	902 KAR 20:140
	902 KAR 20:145

KRS Section	Regulation
216B.400	902 KAR 20:012
216B.990	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:009
	902 KAR 20:012
	902 KAR 20:016
	902 KAR 20:018
	902 KAR 20:021
	902 KAR 20:026
	902 KAR 20:031
	902 KAR 20:036
	902 KAR 20:041
	902 KAR 20:046
	902 KAR 20:048
	902 KAR 20:051
	902 KAR 20:054
	902 KAR 20:056
	902 KAR 20:058
	902 KAR 20:066
	902 KAR 20:072
	902 KAR 20:078
	902 KAR 20:081
	902 KAR 20:086
	902 KAR 20:091
	902 KAR 20:101
	902 KAR 20:106
	902 KAR 20:111
	902 KAR 20:115
	902 KAR 20:120
	902 KAR 20:135
	902 KAR 20:140
	902 KAR 20:145
217.814 to 217.894	904 KAR 1:090
217.990	904 KAR 1:090
217C.010 to 217C.990	902 KAR 50:040
Chapter 218A	902 KAR 55:010
222.210 to 222.230	902 KAR 3:010
Chapter 224	401 KAR 50:010
	401 KAR 50:015
	401 KAR 50:035
	401 KAR 50:055
	401 KAR 51:010
	401 KAR 51:017
	401 KAR 51:052
	401 KAR 51:055
	401 KAR 51:105
	401 KAR 59:005
	401 KAR 59:010
	401 KAR 59:018
	401 KAR 59:101
	401 KAR 59:175
	401 KAR 59:210
	401 KAR 59:212
	401 KAR 61:005
	401 KAR 61:015
	401 KAR 61:020
	401 KAR 61:035
	401 KAR 61:055
	401 KAR 61:056
	401 KAR 61:075
	401 KAR 61:085
	401 KAR 61:120
	401 KAR 61:122
	401 KAR 61:132
	401 KAR 61:140
	401 KAR 61:165
	401 KAR 63:010
	401 KAR 63:030
	401 KAR 63:031
224.032	401 KAR 6:060
224.033	401 KAR 2:050
	401 KAR 2:055
	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:170
	405 KAR 7:090
	405 KAR 16:170
	405 KAR 18:170
224.036	401 KAR 2:060
224.071	401 KAR 2:060
	401 KAR 2:070
224.081	405 KAR 7:090
224.083	405 KAR 7:090
224.087	401 KAR 2:060
224.091	405 KAR 30:170

KRS Section	Regulation
224.250	401 KAR 2:055
224.255	401 KAR 2:050
	401 KAR 2:055
	401 KAR 2:090
	401 KAR 2:095
	401 KAR 2:101
	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:070
	401 KAR 2:073
	401 KAR 2:170
224.855	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
	401 KAR 2:090
	401 KAR 2:095
	401 KAR 2:101
	401 KAR 2:105
	401 KAR 2:170
224.855 to 224.884	401 KAR 2:050
224.855 to 224.889	401 KAR 2:055
224.860	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:170
224.862	401 KAR 2:060
224.864	401 KAR 2:060
	401 KAR 2:073
	401 KAR 2:075
224.866	401 KAR 2:060
	401 KAR 2:070
	401 KAR 2:073
	401 KAR 2:170
224.868	401 KAR 2:060
	401 KAR 2:073
	401 KAR 2:075
224.871	401 KAR 2:060
224.873	401 KAR 2:060
224.874	401 KAR 2:060
224.876	401 KAR 2:060
	401 KAR 2:073
	401 KAR 2:075
224.877	401 KAR 2:060
224.880	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:090
	401 KAR 2:095
	401 KAR 2:101
	401 KAR 2:111
	401 KAR 2:170
224.882	401 KAR 2:111
224.884	401 KAR 2:090
	401 KAR 2:105
224.890	401 KAR 2:063
227.480	815 KAR 7:030
230.210 to 230.360	810 KAR 1:013
	810 KAR 1:018
230.270	811 KAR 1:200
230.630	811 KAR 1:025
	811 KAR 1:125
	811 KAR 1:130
	811 KAR 1:135
	811 KAR 1:180
	811 KAR 1:190
	811 KAR 1:205
230.640	811 KAR 1:025
	811 KAR 1:125
	811 KAR 1:130
	811 KAR 1:135
	811 KAR 1:180
	811 KAR 1:190
	811 KAR 1:205
230.680	811 KAR 1:025
	811 KAR 1:205
230.690	811 KAR 1:125
	811 KAR 1:130
	811 KAR 1:205
230.700	811 KAR 1:025
	811 KAR 1:180
230.710	811 KAR 1:025
	811 KAR 1:180
	811 KAR 1:205
230.720	811 KAR 1:190
230.770	811 KAR 1:032
	811 KAR 1:200
	811 KAR 1:205
241.060	804 KAR 6:010
	804 KAR 9:010

KRS Section	Regulation
241.065	804 KAR 6:010
	804 KAR 9:010
241.075	804 KAR 9:010
243.020	804 KAR 4:100
243.030	804 KAR 4:100
	804 KAR 4:220
	804 KAR 9:010
243.040	804 KAR 4:100
	804 KAR 4:220
243.550	804 KAR 6:010
244.120	804 KAR 5:060
244.130	804 KAR 1:030
	804 KAR 1:100
	804 KAR 2:015
Chapter 246	302 KAR 20:010
247.145	303 KAR 1:100
247.450 to 247.505	302 KAR 1:040
	302 KAR 1:050
250.020 to 250.170	12 KAR 1:020
	12 KAR 1:105
Chapter 257	302 KAR 20:010
257.030	302 KAR 20:120
257.070	302 KAR 20:110
Chapter 278	807 KAR 5:001
	807 KAR 5:006
	807 KAR 5:011
	807 KAR 5:016
	807 KAR 5:026
	807 KAR 5:031
	807 KAR 5:041
	807 KAR 5:046
	807 KAR 5:051
	807 KAR 5:054
	807 KAR 5:056
	807 KAR 5:061
	807 KAR 5:066
	807 KAR 5:071
	807 KAR 5:076
278.485	807 KAR 5:021
278.502	807 KAR 5:021
Chapter 281	601 KAR 1:090
287.100	808 KAR 1:080
287.103	808 KAR 1:080
287.180	808 KAR 1:060
289.061	808 KAR 1:060
289.081	808 KAR 7:020
	808 KAR 7:030
289.291	808 KAR 7:020
	808 KAR 7:030
289.441	808 KAR 7:020
	808 KAR 7:030
289.451	808 KAR 7:020
	808 KAR 7:030
290.020	808 KAR 1:060
290.100	808 KAR 3:030
Chapter 292	808 KAR 10:010
	808 KAR 10:160
292.330	808 KAR 10:200
292.400	808 KAR 10:170
292.410	808 KAR 10:150
	808 KAR 10:190
304.2-080	806 KAR 2:020
304.9-080	806 KAR 9:011
304.9-160	806 KAR 9:070
	806 KAR 9:170
304.9-190	806 KAR 9:070
304.9-200	806 KAR 9:011
304.9-320	806 KAR 9:070
	806 KAR 9:170
304.9-390	806 KAR 9:011
304.9-430	806 KAR 9:070
	806 KAR 9:170
304.14-090	806 KAR 12:070
304.14-120	806 KAR 12:070
	806 KAR 17:070
304.14-130	806 KAR 17:070
304.14-510	806 KAR 17:060
304.17-380	806 KAR 17:070
304.17-400	806 KAR 17:070
304.26-050	806 KAR 26:010
304.32-270	806 KAR 17:060
304.38-180	806 KAR 38:060
304.38-200	806 KAR 17:060
304.39-085	806 KAR 39:060
307.120	808 KAR 2:030
307.130	808 KAR 2:030
307.140	201 KAR 9:095
311.530 to 311.620	201 KAR 9:095
311.990	201 KAR 20:057
314.011	201 KAR 20:070
314.041	201 KAR 20:110
	201 KAR 20:070
314.051	201 KAR 20:110
	201 KAR 20:057
314.193	808 KAR 8:010
316.360	201 KAR 2:050
Chapter 315	815 KAR 20:030
Chapter 318	815 KAR 20:060
	815 KAR 20:070
	815 KAR 20:130
	815 KAR 20:160
	815 KAR 20:191
321.220	201 KAR 16:020
321.260	201 KAR 16:020
	201 KAR 16:030
321.270	201 KAR 16:020
321.330	201 KAR 16:030
	201 KAR 16:050
321.440	201 KAR 16:040
321.450	201 KAR 16:040
Chapter 322	201 KAR 18:040
324.045	201 KAR 11:016
324.160	201 KAR 11:045
325.265	201 KAR 1:045
325.270	201 KAR 1:045
335.010 to 335.150	201 KAR 23:030
335.010 to 335.160	201 KAR 23:050
335.080	201 KAR 23:070
335.100	201 KAR 23:070
335.990	201 KAR 23:050
	201 KAR 23:070
336.510 to 336.680	815 KAR 4:010
337.275	803 KAR 1:090
337.285	803 KAR 1:090
Chapter 338	803 KAR 2:015
	803 KAR 2:020
	803 KAR 2:027
	803 KAR 2:030
	803 KAR 2:032
341.260	904 KAR 5:030
341.710	904 KAR 5:240
Chapter 350	405 KAR 7:020
350.010	405 KAR 7:030
	405 KAR 20:030
	405 KAR 20:050
	405 KAR 20:070
	405 KAR 20:080
350.020	405 KAR 7:060
	405 KAR 8:010
	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:050
	405 KAR 12:010
	405 KAR 12:020
	405 KAR 12:030
	405 KAR 16:010
	405 KAR 16:070
	405 KAR 16:090
	405 KAR 16:150
	405 KAR 16:170
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:220
	405 KAR 16:250
	405 KAR 18:010
	405 KAR 18:070
	405 KAR 18:090
	405 KAR 18:150
	405 KAR 18:170
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:210
	405 KAR 18:230
	405 KAR 18:260
350.028	405 KAR 7:030
	405 KAR 7:060
	405 KAR 7:090
	405 KAR 12:010
350.028	405 KAR 12:020
	405 KAR 12:030
	405 KAR 16:180
	405 KAR 16:220
	405 KAR 16:250
	405 KAR 18:180
	405 KAR 18:210
	405 KAR 18:230
	405 KAR 18:260
	405 KAR 20:030
	405 KAR 20:050
350.050	405 KAR 7:040
	405 KAR 12:010
	405 KAR 12:020
	405 KAR 12:030
350.055	405 KAR 8:010
350.057	405 KAR 7:030
	405 KAR 7:040
	405 KAR 8:020
	405 KAR 20:010
350.060	405 KAR 1:005
	405 KAR 3:005
	405 KAR 7:030
	405 KAR 7:040
	405 KAR 8:010
	405 KAR 8:030
	405 KAR 8:040
	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050
350.062	405 KAR 10:010
	405 KAR 16:020
	405 KAR 16:050
350.064	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050
350.070	405 KAR 1:005
	405 KAR 3:005
	405 KAR 7:090
	405 KAR 8:010
350.085	405 KAR 1:005
	405 KAR 3:005
	405 KAR 8:010
	405 KAR 12:010
	405 KAR 12:020
	405 KAR 16:080
	405 KAR 16:220
	405 KAR 18:080
	405 KAR 18:230
350.090	405 KAR 1:005
	405 KAR 3:005
	405 KAR 7:090
	405 KAR 8:010
	405 KAR 16:010
	405 KAR 16:070
	405 KAR 16:130
	405 KAR 16:150
	405 KAR 18:010
	405 KAR 18:070
	405 KAR 18:130
	405 KAR 18:150
	405 KAR 20:030
	405 KAR 20:060
350.093	405 KAR 1:005
	405 KAR 3:005
	405 KAR 7:090
	405 KAR 8:050
	405 KAR 10:020
	405 KAR 10:040
	405 KAR 10:050
	405 KAR 16:010
	405 KAR 16:020
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:010
	405 KAR 18:020
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:020
	405 KAR 20:060

KRS Section	Regulation
350.095	405 KAR 10:020
	405 KAR 10:050
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:200
	405 KAR 18:220
350.100	405 KAR 1:005
	405 KAR 10:030
	405 KAR 16:020
	405 KAR 16:060
	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:090
	405 KAR 16:100
	405 KAR 16:110
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:020
	405 KAR 18:060
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:090
	405 KAR 18:100
	405 KAR 18:110
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:040
	405 KAR 20:060
350.110	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050
	405 KAR 16:020
350.113	405 KAR 10:040
	405 KAR 12:010
	405 KAR 12:020
350.130	405 KAR 1:005
	405 KAR 3:005
	405 KAR 7:090
	405 KAR 8:010
	405 KAR 10:050
	405 KAR 12:010
	405 KAR 12:020
350.133	405 KAR 20:050
350.135	405 KAR 1:005
	405 KAR 3:005
	405 KAR 8:010
350.151	405 KAR 3:005
	405 KAR 7:030
	405 KAR 8:040
	405 KAR 10:010
	405 KAR 10:040
	405 KAR 10:050
	405 KAR 12:010
	405 KAR 12:020
	405 KAR 16:010
	405 KAR 16:250
	405 KAR 18:010
	405 KAR 18:020
	405 KAR 18:030
	405 KAR 18:040
	405 KAR 18:050
	405 KAR 18:060
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:090
	405 KAR 18:100
	405 KAR 18:110
	405 KAR 18:120
	405 KAR 18:130
	405 KAR 18:140
	405 KAR 18:150
	405 KAR 18:160
	405 KAR 18:170
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:210
	405 KAR 18:220
	405 KAR 18:230
	405 KAR 18:260
	405 KAR 20:020
	405 KAR 20:070
	405 KAR 20:080

KRS Section	Regulation
350.200	405 KAR 1:005
	405 KAR 3:005
	405 KAR 16:030
	405 KAR 18:030
350.210	405 KAR 1:005
	405 KAR 3:005
350.220	405 KAR 1:005
	405 KAR 3:005
350.250	405 KAR 7:100
	405 KAR 30:170
350.255	405 KAR 7:090
	405 KAR 7:110
	405 KAR 30:180
350.405	405 KAR 16:010
	405 KAR 16:020
	405 KAR 16:050
	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:110
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:020
	405 KAR 18:050
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:110
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 20:040
	405 KAR 20:050
	405 KAR 20:060
350.405 to 350.440	405 KAR 3:005
350.405 to 350.455	405 KAR 1:005
350.410	405 KAR 7:040
	405 KAR 16:010
	405 KAR 16:020
	405 KAR 16:060
	405 KAR 16:130
	405 KAR 16:140
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 18:010
	405 KAR 18:130
	405 KAR 18:140
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:220
	405 KAR 20:030
350.415	405 KAR 16:050
	405 KAR 18:050
	405 KAR 20:040
350.420	405 KAR 16:040
	405 KAR 16:060
	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:090
	405 KAR 16:100
	405 KAR 16:110
	405 KAR 16:140
	405 KAR 16:200
	405 KAR 18:040
	405 KAR 18:060
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:090
	405 KAR 18:100
	405 KAR 18:110
	405 KAR 18:140
	405 KAR 18:200
	405 KAR 20:030
350.421	405 KAR 16:060
	405 KAR 18:060
350.425	405 KAR 16:160
	405 KAR 18:160
350.430	405 KAR 16:030
	405 KAR 16:120
	405 KAR 18:030
	405 KAR 18:120
350.435	405 KAR 16:020
	405 KAR 16:180
	405 KAR 16:200
	405 KAR 18:180
	405 KAR 18:200

KRS Section	Regulation
350.440	405 KAR 16:010
	405 KAR 16:060
	405 KAR 16:130
	405 KAR 18:010
	405 KAR 18:060
	405 KAR 18:130
350.445	405 KAR 8:050
	405 KAR 16:010
	405 KAR 20:060
350.450	405 KAR 3:005
	405 KAR 7:040
	405 KAR 8:010
	405 KAR 8:050
	405 KAR 16:010
	405 KAR 16:020
	405 KAR 16:190
	405 KAR 16:210
	405 KAR 18:190
	405 KAR 18:220
	405 KAR 20:040
	405 KAR 20:050
350.455	405 KAR 3:005
	405 KAR 16:100
	405 KAR 18:100
350.465	405 KAR 1:005
	405 KAR 3:005
	405 KAR 7:030
	405 KAR 7:060
	405 KAR 7:080
	405 KAR 7:090
	405 KAR 8:010
	405 KAR 8:030
	405 KAR 8:050
	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050
	405 KAR 12:010
	405 KAR 12:020
	405 KAR 12:030
	405 KAR 16:010
	405 KAR 16:020
	405 KAR 16:030
	405 KAR 16:040
	405 KAR 16:050
	405 KAR 16:060
	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:090
	405 KAR 16:100
	405 KAR 16:110
	405 KAR 16:130
	405 KAR 16:140
	405 KAR 16:150
	405 KAR 16:170
	405 KAR 16:180
	405 KAR 16:190
	405 KAR 16:200
	405 KAR 16:210
	405 KAR 16:220
	405 KAR 16:250
	405 KAR 18:010
	405 KAR 18:020
	405 KAR 18:030
	405 KAR 18:040
	405 KAR 18:050
	405 KAR 18:060
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:090
	405 KAR 18:100
	405 KAR 18:110
	405 KAR 18:130
	405 KAR 18:140
	405 KAR 18:150
	405 KAR 18:170
	405 KAR 18:180
	405 KAR 18:190
	405 KAR 18:200
	405 KAR 18:210
	405 KAR 18:220
	405 KAR 18:230
	405 KAR 18:260
	405 KAR 20:010
	405 KAR 20:020

KRS Section	Regulation
350.465	405 KAR 20:030
	405 KAR 20:040
	405 KAR 20:050
	405 KAR 20:060
	405 KAR 20:070
	405 KAR 20:080
	405 KAR 24:020
	405 KAR 24:030
	405 KAR 24:040
350.600	405 KAR 30:010
	405 KAR 30:020
	405 KAR 30:025
	405 KAR 30:035
	405 KAR 30:040
	405 KAR 30:050
	405 KAR 30:060
	405 KAR 30:070
	405 KAR 30:080
	405 KAR 30:090
	405 KAR 30:100
	405 KAR 30:110
	405 KAR 30:121
	405 KAR 30:125
	405 KAR 30:130
	405 KAR 30:140
	405 KAR 30:150
	405 KAR 30:170
	405 KAR 30:180
	405 KAR 30:190
	405 KAR 30:200
	405 KAR 30:210
	405 KAR 30:220
	405 KAR 30:230
	405 KAR 30:240
	405 KAR 30:250
	405 KAR 30:260
	405 KAR 30:270
	405 KAR 30:280
	405 KAR 30:290
	405 KAR 30:300
	405 KAR 30:310
	405 KAR 30:320
	405 KAR 30:330
	405 KAR 30:340
	405 KAR 30:350
	405 KAR 30:390
	405 KAR 30:400
	405 KAR 30:410
350.610	405 KAR 8:020
	405 KAR 24:020
	405 KAR 24:030
	405 KAR 24:040
350.990	405 KAR 7:090
	405 KAR 7:095
	405 KAR 12:010
	405 KAR 12:020
	405 KAR 30:090
351.175	805 KAR 5:010
351.315	805 KAR 4:010
351.325	805 KAR 4:010
360.210 to 360.265	808 KAR 4:020
510.010-510.140	902 KAR 20:012

KRS Section	Regulation

KRS Section	Regulation

Subject Index

ACCOUNTANCY
Examination, grading of; 201 KAR 1:045

AD VALOREM TAX
(See Taxation)

AERONAUTICS, AIRPORT ZONING
Air Safety Standards
Landing area designations; 602 KAR 20:020

AGRICULTURAL EXPERIMENT STATION
(See also particular subject)
Seed; 12 KAR 1:020; 12 KAR 1:105

AGRICULTURE
Livestock sanitation; 302 KAR 20:010; 302 KAR 20:110E; 302 KAR 20:110; 302 KAR 20:120E; 302 KAR 20:120
Referendums; 302 KAR 1:040; 302 KAR 1:050

AIR POLLUTION
Administrative Procedures
Compliance requirements; 401 KAR 50:055
Definitions, abbreviations; 401 KAR 50:010
Permits, compliance schedules; 401 KAR 50:035
Reference documents; 401 KAR 50:015
Existing Source Standards
Aluminum reduction plants; 401 KAR 61:165
Bulk gasoline plants; 401 KAR 61:056
Bulk gasoline terminals; 401 KAR 61:055
By-product coke manufacturing plants; 401 KAR 61:140
Fabric, vinyl, paper coating; 401 KAR 61:120
Gas streams; 401 KAR 61:035
General provisions; 401 KAR 61:005
Graphic arts facilities; 401 KAR 61:122
Indirect heat exchangers; 401 KAR 61:015
Metal parts coating; 401 KAR 61:132
Process operations; 401 KAR 61:020
Service stations; 401 KAR 61:085
Steel plants, foundries; 401 KAR 61:075
New Source Requirements; Non-Attainment Areas
Attainment status; 401 KAR 51:010
Controlled trading; 401 KAR 51:055
Prevention of significant deterioration; 401 KAR 51:017
Review; 401 KAR 51:052
New Source Standards
Bulk gasoline plants; 401 KAR 59:101
Fabric, vinyl, paper coating; 401 KAR 59:210
Gas streams; 401 KAR 59:105
General provisions; 401 KAR 59:005
Graphic arts facilities; 401 KAR 59:212
Process operations; 401 KAR 59:010
Service stations; 401 KAR 59:175
Stationary gas turbines; 401 KAR 59:018
Performance, General Standards
Fugitive emissions; 401 KAR 63:010
Gasoline tank trucks, leaks; 401 KAR 63:031

ALCOHOLIC BEVERAGE CONTROL
ABC Board
Procedures; 804 KAR 6:010
Advertising distilled spirits, wine
General advertising practices; 804 KAR 1:100
Prohibited statements; 804 KAR 1:030
Repeal; 804 KAR 1:101
Advertising malt beverages
Prohibited statements; 804 KAR 2:015
Business, employees, conduct of
Entertainment requirements; 804 KAR 5:060
Licensing
Records to be retained; 804 KAR 4:100
Riverboats; 804 KAR 4:220
Quotas
Retail liquor license limit; 804 KAR 9:010

AUDITOR OF PUBLIC ACCOUNTS
County budgets, county fee officials, audits for; 45 KAR 1:020

BANKING AND SECURITIES
Administration
Bank service corporations, investments in; 808 KAR 1:080
Remote service units; 808 KAR 1:060
Cemeteries
Cemetery companies, records; 808 KAR 2:030
Credit Unions
Records, examination of; 808 KAR 3:030
Finance Charges
Federal Consumer Credit Protection Act; 808 KAR 4:020
Funeral Homes
Pre-need funeral contracts; 808 KAR 8:010
Savings and Loans
Operating parity; 808 KAR 7:030
State-chartered; 808 KAR 7:020
Securities
Application, registration; 808 KAR 10:010
Definitions; 808 KAR 10:160
Minimum liquid capitalization; 808 KAR 10:200
Registration exemptions; 808 KAR 10:150; 808 KAR 10:170; 808 KAR 10:190

BUILDING CODE
Assessibility standards for physically disabled; 815 KAR 7:050
Building code; 815 KAR 7:020
Energy code; 815 KAR 7:030

BUILDINGS, GROUNDS, EDUCATION
Construction criteria; 702 KAR 4:060
Construction; plans, specifications; 702 KAR 4:020
Construction project application; 702 KAR 4:010
Contract completion, changes, retainage; 702 KAR 4:040
Property, disposal of; 702 KAR 4:090
Utilities, design for; 702 KAR 4:070

CERTIFICATE OF NEED, LICENSURE
(See Health Services)

CLAIMS, BOARD OF
Board operation, claims procedure; 108 KAR 1:010

COMMERCE
(See Development)

DEVELOPMENT
Agriculture
Livestock sanitation; 302 KAR 20:010
Fair, State
Exposition Center, grounds; 303 KAR 1:100E
Fish, Wildlife
Fish; 301 KAR 1:055 to 301 KAR 1:145
Game; 301 KAR 2:045 to 301 KAR 2:115
Hunting; 301 KAR 3:053

EDUCATION
Buildings, grounds; 702 KAR 4:020 to 702 KAR 4:090
Exceptional
Exceptional, handicapped education; 707 KAR 1:090; 707 KAR 1:100; 707 KAR 1:110
Instruction
Elementary, secondary; 704 KAR 10:022
Health; 704 KAR 4:010; 704 KAR 4:020
Instructional programs; 704 KAR 3:005 to 704 KAR 3:304
Kindergarten, nursery schools; 704 KAR 5:050
Teacher certification; 704 KAR 20:005 to 704 KAR 20:255
Teacher education; 704 KAR 15:090
School Building Authority; 723 KAR 1:005
Vocational
Administration; 705 KAR 1:010
Adult education; 705 KAR 7:020; 705 KAR 7:050

EMPLOYEES, STATE
Personnel Rules
Appointments, types of; 101 KAR 1:090
Compensation plan; 101 KAR 1:055
Promotion, transfer, demotion, special duty detail; 101 KAR 1:110
Services; 101 KAR 1:140
Unclassified service; 101 KAR 1:200
Retirement
Actuarial assumption, tables; 105 KAR 1:040
Contributions, interest rates; 105 KAR 1:010
Military service credit; 105 KAR 1:070
Repeal; 105 KAR 1:040

ENGINEERS, LAND SURVEYORS
Fees; 201 KAR 18:040

ENVIRONMENTAL PROTECTION
Air Pollution
Administrative procedures; 401 KAR 50:010 to 401 KAR 50:055
Existing sources; 401 KAR 61:005 to 401 KAR 61:165
New source requirements; non-attainment areas; 401 KAR 51:010 to 401 KAR 51:055
New source standards; 401 KAR 59:005 to 401 KAR 59:105
Performance, general standards; 401 KAR 63:010; 401 KAR 63:031
Waste management; 401 KAR 2:050 to 401 KAR 2:170
Water
Water sample analysis fees; 401 KAR 6:060

EXCEPTIONAL, HANDICAPPED EDUCATION
Blind, School for
Admission policy; 707 KAR 1:110
Deaf, School for
Admission policy; 707 KAR 1:100
Code of conduct; 707 KAR 1:090

FAIRGROUNDS, EXPOSITION CENTER
Sales, fixtures and goods, solicitation; 303 KAR 1:100

FINANCE
Administration
Travel expense, reimbursement for; 200 KAR 2:006E; 200 KAR 2:006
Area Development
Project approval, funds, title; 200 KAR 9:010
Occupations, Professions
Accountancy; 201 KAR 1:045
Engineers, land surveyors; 201 KAR 18:040
Medical licensure; 201 KAR 9:095
Nursing; 201 KAR 20:057
Pharmacy; 201 KAR 2:050
Real Estate Commission; 201 KAR 11:045
Social work; 201 KAR 23:030 to 201 KAR 23:070
Veterinary examiners; 201 KAR 16:020 to 201 KAR 16:050
Property
Leased; 200 KAR 6:035
Purchasing
Repeal; 200 KAR 5:320
Small purchase procedures; 200 KAR 5:308

FISH, WILDLIFE
Fish
Angling, limits, seasons; 301 KAR 1:055
Commercial fishing, special permit; 301 KAR 1:140
Commercial, gear for; 301 KAR 1:145
Gigging, snagging, etc.; 301 KAR 1:075
Importation, possession; 301 KAR 1:122
Live bait; 301 KAR 1:130
Mussel shell harvesting; 301 KAR 1:085
Game
Deer; gun, archery seasons; 301 KAR 2:115
Deer, turkey; special areas; 301 KAR 2:111
Land Between the Lakes, hunting rules; 301 KAR 2:050

FISH, WILDLIFE (Cont'd)
Limits, seasons for migratory wildlife; 301 KAR 2:086
Migratory wildlife; 301 KAR 2:046E
Small game, seasons, limits; 301 KAR 2:045; 301 KAR 2:047
Hunting
Wild turkey, spring seasons for; 301 KAR 3:053

FOOD STAMPS
(See Social Insurance)

HAZARDOUS MATERIAL
(See Waste Management)

HEALTH SERVICES
Alcohol, Drugs, Occupational Programs
Licensing; 902 KAR 3:010
Certificate of Need, Licensure
Ambulatory care clinics; 902 KAR 20:072
Ambulance services; 902 KAR 20:115
Ambulatory surgical centers; 902 KAR 20:101; 902 KAR 20:106
Application fee schedule; 902 KAR 20:135
Certificate process; 902 KAR 20:006
Day health care; 902 KAR 20:066
Family care homes; 902 KAR 20:041
Group homes; 902 KAR 20:078
Health maintenance organizations; 902 KAR 20:054
Home health agencies; 902 KAR 20:081
Hospice; 902 KAR 20:140
Hospital examination services; 902 KAR 20:012
Hospitals; 902 KAR 20:009; 902 KAR 20:016
Intermediate care; 902 KAR 20:051; 902 KAR 20:056
License and fee schedule; 902 KAR 20:008
Medical alcohol emergency detoxification centers; 902 KAR 20:111
Mental health-mental retardation center; 902 KAR 20:091
MR/DD intermediate care facilities; 902 KAR 20:086
Non-emergency health transportation service; 902 KAR 20:120
Nursing homes; 902 KAR 20:046; 902 KAR 20:048
Personnel care homes; 902 KAR 20:031; 902 KAR 20:036
Primary care centers; 902 KAR 20:058
Renal dialysis facilities; 902 KAR 20:018
Rural health clinics; 902 KAR 20:145
Skilled nursing facilities; 902 KAR 20:021; 902 KAR 20:026
Controlled Substances
Licensing; 902 KAR 55:010
Emergency Medical Services
Salary payment assistance; 902 KAR 14:015E
Emergency Medical Technician
Fees; 902 KAR 13:030
Health Boards, Districts
Membership; 902 KAR 8:010
Maternal, Child Health
Care of eyes; 902 KAR 4:020
Milk, Milk Products
Hauler requirements; 902 KAR 50:040
Social Security Act
Section 1122 Review; 902 KAR 25:010

HIGHWAYS
Maintenance
Advertising devices; 603 KAR 3:010
Traffic
Coal-haul highway system; 603 KAR 5:115
Highway classifications; 603 KAR 5:096
Mobile homes, permits for moving; 603 KAR 5:110E; 603 KAR 5:110
Trucks, dimension limits of; 603 KAR 5:070

HOUSING, BUILDINGS, CONSTRUCTION
Building code; 815 KAR 7:020 to 815 KAR 7:060
Elevator Safety
Elevators, dumbwaiters, escalators, moving walks; 815 KAR 4:010
Plumbing; 815 KAR 20:030 to 815 KAR 20:191

HUMAN RESOURCES
Health Services
Alcohol, drugs, occupational programs; 902 KAR 3:010
Boards of health, districts; 902 KAR 8:010
Certificate of need, licensure; 902 KAR 20:006 to 902 KAR 20:145
Controlled substances; 902 KAR 55:010
Emergency medical services; 902 KAR 14:015E
Emergency medical technicians; 902 KAR 13:030
Maternal, child health; 902 KAR 4:020
Milk, milk products; 902 KAR 50:040
Social Security Act; 902 KAR 25:010
Manpower Services
Human services; 903 KAR 2:010
Social Insurance
Food stamp program; 904 KAR 3:010E to 904 KAR 3:080
Medical assistance; 904 KAR 1:003E to 904 KAR 1:090
Public assistance; 904 KAR 2:005E to 904 KAR 2:110
Unemployment insurance; 904 KAR 5:030; 904 KAR 5:240

INSTRUCTION, EDUCATION
Elementary, Secondary
Standards; 704 KAR 10:022
Health
Comprehensive school health; 704 KAR 4:020
Physical education; 704 KAR 4:010
Instructional Services
Classroom units; 704 KAR 3:025
ESEA program plan; 704 KAR 3:290
Head teacher; 704 KAR 3:052
Implementation plan; 704 KAR 3:005
Repeal; 704 KAR 3:281; 704 KAR 3:301
Studies, required program of; 704 KAR 3:304
Kindergarten, Nursery Schools
Public programs; 704 KAR 5:050
Teacher Certification
Emergency certification; 704 KAR 20:120
Hearing impaired; 704 KAR 20:229; 704 KAR 20:235
Learning, behavior disorders; 704 KAR 20:235
Mentally handicapped; 704 KAR 20:245
Preparation program plan, approval of; 704 KAR 20:005
Substitute teachers; 704 KAR 20:210
Visually impaired; 704 KAR 20:255
Teacher Education
Incentive loan program; 704 KAR 15:090

INSURANCE
Administration
Interest, rewards, prohibition of; 806 KAR 2:020
Agents, Consultants, Solicitors, Adjusters
Examination, minimum score; 806 KAR 9:170
Examination, retake limits; 806 KAR 9:070
Repeal; 806 KAR 9:011; 806 KAR 9:091
Contracts, Health
Insurance rates, filing procedures; 806 KAR 17:070
Medicare supplement policies; 806 KAR 17:060
Equity Securities, Insider Training
Proxies, consents, authorization; 806 KAR 26:010
Health Maintenance Organizations
Coverage, cancellation; 806 KAR 38:060
Motor Vehicle Reparation (No-Fault)
Stickers, emblems; 806 KAR 39:060
Trade Practices, Frauds
Application requirements; 806 KAR 12:070

LABOR
Occupational safety, health; 803 KAR 2:010 to 803 KAR 2:032
Standards, wages, hours; 803 KAR 1:090

LABOR STANDARDS; WAGES; HOURS
Handicapped, sheltered workshop, student employees; 803 KAR 1:090

LIVESTOCK SANITATION
Definitions; 302 KAR 20:010
Imported mares, treatment of; 302 KAR 20:110E; 302 KAR 20:110
Imported stallions, treatment of; 302 KAR 20:120E; 302 KAR 20:120

MANPOWER SERVICES
Human Services
Weatherization Assistance Program; 903 KAR 2:010

MEDICAL ASSISTANCE
(See Social Insurance)

MEDICAL LICENSURE
Advanced registered nurse practitioners; 201 KAR 9:095

MINES, MINERALS
Explosives, Blasting
Licensing; 805 KAR 4:010
Mining
Operating licenses, fees for; 805 KAR 5:010

NATURAL RESOURCES
Enviornmantal Protection
Air pollution; 401 KAR 50:010 to 401 KAR 63:031
Waste management; 401 KAR 2:050 to 401 KAR 2:170
Water; 401 KAR 6:060
Reclamation
Bond, insurance; requirements for; 405 KAR 10:010E to 405 KAR 10:050E
General provisions; 405 KAR 7:020E to 405 KAR 7:110E
Inspection, enforcement; 405 KAR 12:010E to 405 KAR 12:030E
Oil shale operations; 405 KAR 30:010 to 405 KAR 30:410
Performance standards, special; 405 KAR 20:010E to 405 KAR 20:080E
Permits; 405 KAR 8:010E to 405 KAR 8:050E
Strip mining; 405 KAR 1:005E
Surface mining, performance standards for; 405 KAR 16:010E to 405 KAR 16:250E
Underground mining, performance standards for; 405 KAR 18:010E to 405 KAR 18:260E
Underground mining, surface effects of; 405 KAR 3:005E
Unsuitable areas; 405 KAR 24:020E to 405 KAR 24:040E

NURSING
Advanced registered nurse practitioner; 201 KAR 20:057

OCCUPATIONAL SAFETY, HEALTH
Board procedures; 803 KAR 2:010
General industry standards; 803 KAR 2:015
29 CFR Part 1910; 803 KAR 2:020
29 CFR Parts 1915 to 1919; 803 KAR 2:027
29 CFR Part 1926; 803 KAR 2:030
29 CFR Part 1928; 803 KAR 2:032

OCCUPATIONS, PROFESSIONS
Accountancy; 201 KAR 1:045
Engineers, land surveyors; 201 KAR 18:040
Medical licensure; 201 KAR 9:095
Nursing; 201 KAR 20:057
Pharmacy; 201 KAR 2:050
Real Estate Commission; 201 KAR 11:045
Social work; 201 KAR 23:030 to 201 KAR 23:070
Veterinary examiners; 201 KAR 16:020 to 201 KAR 16:050

OIL SHALE OPERATIONS
(See Reclamation, Enforcement)

PERSONNEL
(See also Employees, State)
Personnel rules; 101 KAR 1:055 to 101 KAR 1:200

PHARMACY
Licenses, fee; 201 KAR 2:050

PLUMBING
Installation; 815 KAR 20:130
License application; 815 KAR 20:030
Materials; quality, weight; 815 KAR 20:060
Minimum fixture requirements; 815 KAR 20:191
Plumbing fixtures; 815 KAR 20:070
Sewage disposal systems; 815 KAR 20:160

PROPERTY
Leased properties; 200 KAR 6:035

PUBLIC ASSISTANCE
(See Social Insurance)

PUBLIC PROTECTION
Alcoholic Beverage Control
ABC Board; 804 KAR 6:010
Advertising distilled spirits, wine; 804 KAR 1:030; 804 KAR 1:100; 804 KAR 1:101
Advertising malt beverages; 804 KAR 2:015
Business, employees, conduct of; 804 KAR 5:060
Licensing; 804 KAR 4:100; 804 KAR 4:220
Quotas; 804 KAR 9:010
Banking and Securities
Administration; 808 KAR 1:060; 808 KAR 1:080
Cemeteries; 808 KAR 2:030
Credit unions; 808 KAR 3:030
Funeral homes; 808 KAR 8:010
Finance charges; 808 KAR 4:020
Savings and loans; 808 KAR 7:020; 808 KAR 7:030
Securities; 808 KAR 10:010 to 808 KAR 1:190
Housing, Buildings, Construction
Building code; 815 KAR 7:020 to 815 KAR 7:060
Elevator safety; 815 KAR 4:010
Plumbing; 815 KAR 20:030 to 815 KAR 20:191
Insurance
Administration; 806 KAR 2:020
Agents, consultants, solicitors, adjusters; 806 KAR 9:011 to 806 KAR 9:170
Equity securities, insider training; 806 KAR 26:010
Health contracts; 806 KAR 17:060; 806 KAR 17:070
Health maintenance organizations; 806 KAR 38:060
Motor vehicle reparation (no-fault); 806 KAR 39:060
Trade practices, frauds; 806 KAR 12:070
Labor
Occupational safety and health; 803 KAR 2:015; 803 KAR 2:020; 803 KAR 2:030; 803 KAR 2:032
Standards, wages, hours; 803 KAR 1:090
Mines, Minerals
Explosives, blasting; 805 KAR 4:010
Mining; 805 KAR 5:010
Public Service Commission; 807 KAR 5:001 to 807 KAR 5:076
Racing
Harness; 811 KAR 1:025 to 811 KAR 1:205
Thoroughbred; 810 KAR 1:013; 810 KAR 1:018

PUBLIC SERVICE COMMISSION
Advertising; 807 KAR 5:016
Alternate rate adjustment; 807 KAR 5:076
Electric; 807 KAR 5:041
Electric, consumer information; 807 KAR 5:051

PUBLIC SERVICE COMMISSION (Cont'd)
Fuel adjustment clause; 807 KAR 5:056
Gas; 807 KAR 5:021
Gas service, service lines; 807 KAR 5:026
Gas well determination; 807 KAR 5:031
Master metering, prohibition of; 807 KAR 5:046
Procedure, rules of; 807 KAR 5:001
Rules, general; 807 KAR 5:006E; 807 KAR 5:006
Sewage; 807 KAR 5:071
Small power production, cogeneration; 807 KAR 5:054
Tariffs; 807 KAR 5:011E; 807 KAR 5:011
Water; 807 KAR 5:066

RACING
Harness
Eligibility, enforcement; 811 KAR 1:032
Fairs, eligibility for funds; 811 KAR 1:205
Farm, stable name; 811 KAR 1:025
ID, cards, badges; 811 KAR 1:135
Other matters, violations; 811 KAR 1:190
Pari-mutuel rules; 811 KAR 1:125
Personnel licensing, fees; 811 KAR 1:180
Purses, payments, administration of; 811 KAR 1:200
Security; 811 KAR 1:130
Thoroughbred
Entries, subscriptions, declarations; 810 KAR 1:013
Medication, testing procedures; 810 KAR 1:018

REAL ESTATE
Written offers, submission of; 201 KAR 11:045

RECLAMATION, ENFORCEMENT
Bonds, Insurance
Bond; amount, duration; 405 KAR 10:020E
Bond, release of; 405 KAR 10:040E
Forfeiture; 405 KAR 10:050E
Forms, terms, conditions; 405 KAR 10:030E
Requirements, general; 405 KAR 10:010E
Inspection, Enforcement
Enforcement; 405 KAR 12:020E
Provisions, general; 405 KAR 12:010E
Public participation; 405 KAR 12:030E
Oil Shale Operations
Air resources protection; 405 KAR 30:230
Backfilling, grading; 405 KAR 30:390
Bond forfeiture; 405 KAR 30:080
Bonding requirements; 405 KAR 30:050
Citizens demands for enforcement; 405 KAR 30:170
Data requirements; 405 KAR 30:160
Definitions; 405 KAR 30:010
Diversion of flows; water withdrawal; 405 KAR 30:310
Drilled holes; 405 KAR 30:270
Enforcement; 405 KAR 30:100
Excess spoil materials, disposal; 405 KAR 30:370
Experimental practices; 405 KAR 30:025
Exploration performance standards; 405 KAR 30:125
Exploration permits; 405 KAR 30:120
Explosives; 405 KAR 30:250
General provisions; 405 KAR 30:020
Hydrologic system, protection of; 405 KAR 30:300
In situ operations; 405 KAR 30:410
Inspection, enforcement; general provisions; 405 KAR 30:090
Inspection, enforcement; public participation; 405 KAR 30:110
Lands unsuitable, petition requirements; 405 KAR 30:200
Lands unsuitable, process and criteria; 405 KAR 30:190
Leachate control; 405 KAR 30:340
Operation permits; 405 KAR 30:130
Performance bond; amount, duration; 405 KAR 30:040
Performance bond; forms, terms, conditions; 405 KAR 30:060

RECLAMATION, ENFORCEMENT (Cont'd)
Performance bond; liability; 405 KAR 30:030
Performance bond; procedures, criteria, schedule for release; 405 KAR 30:070
Permanent impoundments; 405 KAR 30:350
Petitions for rulemaking; 405 KAR 30:180
Postmining land use; 405 KAR 30:220
Prime farmland; 405 KAR 30:280
Protection of environment; 405 KAR 30:240
Public inspection of records, confidential nature; 405 KAR 30:150
Revegetation; 405 KAR 30:400
Sediment control; 405 KAR 30:330
Signs, markers; 405 KAR 30:210
Spent shale disposal; 405 KAR 30:380
Topsoil; 405 KAR 30:290
Transfer of permit, successor in interest; 405 KAR 30:140
Transport facilities; 405 KAR 30:260
Waste disposal; 405 KAR 30:360
Water quality standards; 405 KAR 30:320
Permits
Exploration; 405 KAR 8:020E
Provisions, general; 405 KAR 8:010E
Special categories, permits for; 405 KAR 8:050E
Surface mining, permits for; 405 KAR 8:030E
Underground mining, permits for; 405 KAR 8:040E
Provisions, General
Applicability; 405 KAR 7:030E
Civil penalties, assessment of; 405 KAR 7:095E
Definitions, abbreviations; 405 KAR 7:020E
Experimental practices; 405 KAR 7:060E
Hearings; 405 KAR 7:090E
Operators, permittees, obligations of; 405 KAR 7:040E
Rulemaking, petitions for; 405 KAR 7:110E
Small operator, assistance for; 405 KAR 7:080E
Suits, citizens, notice of; 405 KAR 7:100E
Special Standards
Auger mining; 405 KAR 20:030E
Concurrent mining; 405 KAR 20:020E
Exploration, coal; 405 KAR 20:010E
Farmland, prime; 405 KAR 20:040E
In situ processing; 405 KAR 20:080E
Mountaintop, removal of; 405 KAR 20:050E
Offsite plants, facilities; 405 KAR 20:070E
Slopes, steep; 405 KAR 20:060E
Strip Mining
Applicability; 405 KAR 1:005E
Surface Mining Standards
Air, protection of; 405 KAR 16:170E
Backfilling, grading; 405 KAR 16:190E
Contemporaneous reclamation; 405 KAR 16:020E
Dams, impoundments; 405 KAR 16:160E
Diversions; 405 KAR 16:080E
Explosives, use of; 405 KAR 16:120E
Facilities, other; 405 KAR 16:250E
Fish, wildlife, environment, protection of; 405 KAR 16:180E
Holes, drilled; casing, sealing of; 405 KAR 16:040E
Hydrologic, general requirements; 405 KAR 16:060E
Impoundments; 405 KAR 16:100E
Land use, postmining; 405 KAR 16:210E
Markers, signs; 405 KAR 16:030E
Provisions, general; 405 KAR 16:010E
Revegetation; 405 KAR 16:200E
Roads; 405 KAR 16:220E
Sedimentation ponds; 405 KAR 16:090E
Spoil, excess, disposal of; 405 KAR 16:130E
Topsoil; 405 KAR 16:050E
Waste, disposal of; 405 KAR 16:140E; 405 KAR 16:150E
Water, monitoring of; 405 KAR 16:110E
Water, standards for; 405 KAR 16:070E
Underground Mining Standards
Air, protection of; 405 KAR 18:170E
Backfilling, grading; 405 KAR 18:190E
Contemporaneous reclamation; 405 KAR 18:020E

RECLAMATION, ENFORCEMENT (Cont'd)
Dams, impoundments; 405 KAR 18:160E
Diversions; 405 KAR 18:080E
Explosives, use of; 405 KAR 18:120E
Facilities, other; 405 KAR 18:260E
Fish, wildlife, environment, protection of; 405 KAR 18:190E
Hydrologic, requirements for; 405 KAR 18:060E
Impoundments; 405 KAR 18:100E
Land use, postmining; 405 KAR 18:220E
Markers, signs; 405 KAR 18:030E
Openings, casing, sealing of; 405 KAR 18:040E
Provisions, general; 405 KAR 18:010E
Revegetation; 405 KAR 18:200E
Roads; 405 KAR 18:230E
Sedimentation ponds; 405 KAR 18:090E
Subsidence, control of; 405 KAR 18:210E
Topsoil; 405 KAR 18:050E
Waste, spoil, disposal of; 405 KAR 18:130E; 405 KAR 18:140E; 405 KAR 18:150E
Water, monitoring of; 405 KAR 18:110E
Water, standards for; 405 KAR 18:070E
Underground Mining, Surface Effects
Applicability; 405 KAR 3:005E
Unsuitable Areas
Permit, application; review of; 405 KAR 24:040E
Petition, requirements for; 405 KAR 24:020E
Process, criteria for designating; 405 KAR 24:030E

REFERENDUMS
Agriculture
Grade A milk; 302 KAR 1:050
Manufacturing grade milk; 302 KAR 1:040

REVENUE, DEPT. OF
Ad Valorem Tax
State assessment; 103 KAR 8:090
General Administration
Repeal; 103 KAR 1:030
Income Tax
Corporations; 103 KAR 16:141
Withholding; 103 KAR 18:030

RETIREMENT
KERS
Actuarial assumptions, tables; 105 KAR 1:040
Contributions, interest rates; 105 KAR 1:010
Military service credit; 105 KAR 1:070
Repeal; 105 KAR 1:061
Teachers'
Investments; 102 KAR 1:190
Military service, credit for; 102 KAR 1:057
Payroll reports; 102 KAR 1:195

SEED
Charges, schedule of; 12 KAR 1:105
Noxious weed seed; 12 KAR 1:020

SCHOOL BUILDING AUTHORITY
Funding procedures; 723 KAR 1:005

SOCIAL INSURANCE
Food Stamps
Additional provisions; 904 KAR 3:050E; 904 KAR 3:050
Administrative fraud hearings; 904 KAR 3:060; 904 KAR 3:060E
Application process; 904 KAR 3:030E; 904 KAR 3:030
Certification process; 904 KAR 3:035E; 904 KAR 3:035
Contingency plan; 904 KAR 3:080
Coupon issuance; 904 KAR 3:045E; 904 KAR 3:045
Definitions; 904 KAR 3:010E; 904 KAR 3:010
Eligibility requirements; 904 KAR 3:020E; 904 KAR 3:020
Fair hearings; 904 KAR 3:070
Issuance procedures; 904 KAR 3:040; 904 KAR 3:040E

SOCIAL INSURANCE (Cont'd)
Medical Assistance
Dental services; 904 KAR 1:026E; 904 KAR 1:026; 904 KAR 1:027E; 904 KAR 1:027
Drug formulary; 904 KAR 1:090
Family planning services; 904 KAR 1:049
Inpatient hospital services; 904 KAR 1:012; 904 KAR 1:013E; 904 KAR 1:013
Intermediate care services; 904 KAR 1:036E; 904 KAR 1:036
Medically needy, income of; 904 KAR 1:004E; 904 KAR 1:004
Mental health center services; 904 KAR 1:044; 904 KAR 1:045E; 904 KAR 1:045
Out-patient surgical clinics; 904 KAR 1:008
Payment for out-of-state services; 904 KAR 1:084
Pediatric services; 904 KAR 1:033E; 904 KAR 1:033
Physicians' services; 904 KAR 1:010E; 904 KAR 1:010
Primary care center services; 904 KAR 1:054
Rural health clinic services; 904 KAR 1:080; 904 KAR 1:082
Technical eligibility; 904 KAR 1:003E; 904 KAR 1:003; 904 KAR 1:011E; 904 KAR 1:011
Vision care services, payments; 904 KAR 1:040E; 904 KAR 1:040
Public Assistance
Adverse actions, conditions for; 904 KAR 2:045E; 904 KAR 2:046E; 904 KAR 2:046
AFDC, standards for; 904 KAR 2:010E; 904 KAR 2:010; 904 KAR 2:016E; 904 KAR 2:016
AFDC, technical requirements; 904 KAR 2:005E; 904 KAR 2:005; 904 KAR 2:006E; 904 KAR 2:006
Child support; 904 KAR 2:020
Eligibility; 904 KAR 2:040E; 904 KAR 2:040
Hearings, appeals; 904 KAR 2:055
Home energy assistance program; 904 KAR 2:100E; 904 KAR 2:100
Payment, time and manner; 904 KAR 2:050
Refugee assistance; 904 KAR 2:110
Repeal; 904 KAR 2:007; 904 KAR 2:082
Right to apply; 904 KAR 2:035
Unemployment Insurance
Employer contributions; 904 KAR 5:030E; 904 KAR 5:030
Extended benefits; 904 KAR 5:240

SOCIAL WORK
License
Reinstatement, termination; 201 KAR 23:050
Renewal fee; 201 KAR 23:030
Specialty certification; 201 KAR 23:070

TAXATION
Ad Valorem; State Assessment
Property, classification of; 103 KAR 8:090
Income, Corporations
Repeal; 103 KAR 16:141
Income, Withholding
Reporting requirements; 103 KAR 18:030

TEACHERS' RETIREMENT
General retirement rules; 102 KAR 1:057; 102 KAR 1:190; 102 KAR 1:195

TRANSPORTATION
Aeronautics, Airport Zoning
Airport Safety; 602 KAR 20:020
Highways
Maintenance; 603 KAR 3:010
Traffic; 603 KAR 5:070; 603 KAR 5:096; 603 KAR 5:110E; 603 KAR 5:110; 603 KAR 5:115
Vehicle Regulation
Motor carriers; 601 KAR 1:090
Motor vehicle dealers; 601 KAR 20:070

TRAVEL EXPENSE
Reimbursement; 200 KAR 2:006

VEHICLE REGULATION
Motor Carriers
Exempted commodities; 601 KAR 1:090
Motor vehicle dealers
Suitable premises, signs, multibusinesses; 601 KAR 20:070

VETERINARY EXAMINERS
Continuing education; 201 KAR 16:050
Examination for licensing; 201 KAR 16:020
Renewal, notice of; 201 KAR 16:030
Technicians; 201 KAR 16:040

VOCATIONAL EDUCATION
Administration
Program plans, annual; 705 KAR 1:010
Adult Education
Adult plan; 705 KAR 7:050
Testing program; 705 KAR 7:020

WASTE MANAGEMENT
Certification for disposal facilities operators; 401 KAR 2:111
Definitions; 401 KAR 2:050
Disposal fees; 401 KAR 2:105
Disposal permit process; 401 KAR 2:090
General standards; 401 KAR 2:063
Generators of hazardous waste; 401 KAR 2:070
Hazardous waste permit; 401 KAR 2:060
Identification, listing; 401 KAR 2:075
Interim status standards; 401 KAR 2:073
Landfarming facilities; 401 KAR 2:101
Provisions, general; 401 KAR 2:055
Recycling, permits, standards; 401 KAR 2:170
Sanitary landfills; 401 KAR 2:095

WILDLIFE
(See Fish, Wildlife)