

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. Chapter 25, 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5) and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 8.

Section 1. Definitions.

- (1) "Acid drainage" means water with a pH of less than six and zero-tenths (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.
- (2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials that, if exposed to air, water, or weathering processes, form acids that could create acid drainage.
- (3) "Acquisition" means 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.
- (4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 could be adversely impacted by surface coal mining and reclamation operations.
- (5) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.
- (6) "Affected area" means any land or water area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes:
 - (a) The disturbed area;
 - (b) Any area upon which surface coal mining and reclamation operations are conducted;
 - (c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;
 - (d) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as established in this definition;
 - (e) Any area covered by surface 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, or shipping areas;
 - (f) Any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations;
 - (g) The area located above underground workings associated with underground mining activities;
 - (h) Auger mining or in situ mining; and

- (i) Every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:
1. Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;
 2. Is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and
 3. There is substantial (more than incidental) public use.
- (7) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and 405 KAR Chapter 24.
- (8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits, revisions, amendments, renewals, and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.
- (9) "Approximate original contour" is defined by KRS 350.010.
- (10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.
- (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 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 and secondary recovery systems.
- (12) "Best technology currently available" means equipment, devices, systems, methods, or techniques;
- (a) That 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 if practicable;
 - (b) That are currently available anywhere as determined by the cabinet, even if not in routine use; and
 - (c) includes construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.
- (13) "Cabinet" is defined by KRS 350.010.
- (14) "Cemetery" means any area where human bodies are interred.
- (15) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.
- (16) "C.F.R." means Code of Federal Regulations.
- (17) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.
- (18) "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 pursuant to the requirements of 405 KAR

Chapters 7 through 24 if the activity could cause any disturbance of the land surface or any appreciable effect upon land, air, water, or other environmental resources.

(19) "Coal mine waste" means coal processing waste and underground development waste.

(20) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) "Coal processing waste" means materials separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and that is supported by the deposit with the cabinet 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.

(23) "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.

(24) "Community or institutional building" means a structure, other than a public building or occupied dwelling, that is used:

(a) For meetings, gatherings, or functions of:

1. A local civic organization; or
2. Other community group;

(b) As a facility for the following purposes:

1. Educational;
2. Cultural;
3. Historic;
4. Religious;
5. Scientific; or
6. Correctional;

(c) As a mental or physical health care facility;

(d) To supply water;

(e) To generate power;

(f) To treat sewage; or

(g) For another public service.

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

(26) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and if a permit or exploration approval could be issued.

(27) "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.

(28) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation could interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining includes, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

- (c) Any operation for which a permit application has been submitted to the cabinet; and
 - (d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.
- (29) "Day" means calendar day unless otherwise specified to be a working day.
- (30) "Department" means the Department for Natural Resources.
- (31) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
- (32) "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 405 KAR Chapter 10 is released.
- (33) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.
- (34) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.
- (35) "Ephemeral stream" means a stream that 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 that has a channel bottom that is always above the local water table.
- (36) "Excess spoil":
- (a) Means spoil disposed of in a location other than the coal extraction area; and
 - (b) Does not mean spoil material used to achieve the approximate original contour.
- (37) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.
- (38) "Federal lands":
- (a) Means any lands, 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; and
 - (b) Does not include Indian lands.
- (39) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.
- (40) "Fugitive dust" means particulate matter that becomes airborne due to wind erosion from exposed surfaces.
- (41) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area that is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.
- (42) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.
- (43) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.
- (44) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.
- (45) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.
- (46) "Historically used for cropland."

- (a) "Historically used for cropland" means that lands have been used for cropland for any of five (5) years or more of the ten (10) years immediately preceding the:
1. Application; or
 2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;
- (b) Lands meeting either paragraph (a)1. or 2. of this subsection are considered "historically used for cropland."
- (c) In addition to the lands covered by paragraph (a) of this subsection, other lands are considered "historically used for cropland," including:
1. Lands 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 cabinet 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) in ten (10) criterion.
- (47) "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.
- (48) "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.
- (49) "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.
- (50) "Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid material.
- (51) "Impoundment" means a water, sediment, slurry, or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built.
- (52) "Incidental boundary revision" means an extension to a permit area or shadow area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area or shadow area.
- (53) "Industrial/commercial lands" means lands used for:
- (a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities; or
 - (b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.
- (54) "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 in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.
- (55) "Intermittent stream" means a stream or reach of a stream that:

- (a) Drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or
 - (b) Is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.
- (56) "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.
- (57) "KAR" means Kentucky administrative regulations.
- (58) "KRS" means Kentucky Revised Statutes.
- (59) "Land use" means specific functions, uses, or management-related activities of an area, and could be identified in combination when joint or seasonal uses occur and could include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.
- (60) "Material damage", as used in 405 KAR 8:040, Section 26 means:
- (a) Any functional impairment of surface lands, features, structures, or facilities;
 - (b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
 - (c) Any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.
- (61) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
- (62) "MRP" means mining and reclamation plan.
- (63) "MSHA" means Mine Safety and Health Administration.
- (64) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.
- (65) "Noncommercial building":
- (a) Means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building; and
 - (b) Does not mean any building used only for commercial agricultural, industrial, retail, or other commercial enterprises.
- (66) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet that establishes with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions that the authorized representative of the cabinet determines to have occurred based upon 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.
- (67) "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This includes a notice of noncompliance and order for remedial measures.
- (68) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
- (69) "Occupied residential dwelling and structures related thereto":
- (a) Means, for purposes of 405 KAR 8:040, Section 26, and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to

or used in connection with an occupied residential dwelling. Examples of these structures include garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems; and

(b) Does not mean any structure used only for commercial agricultural, industrial, retail or other commercial purposes.

(70) "Operations" is defined by KRS 350.010.

(71) "Operator" is defined by KRS 350.010.

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

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet 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 cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval that:

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.

(73) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(74) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(75) "Overburden" is defined by KRS 350.010.

(76) "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships established in paragraphs (a) and (b) of this subsection.

(a)

1. Being a permittee of a surface coal mining operation;
2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or
3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations; and

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;
2. Being the operator of a surface coal mining operation;
3. Having the ability to commit the financial or real property assets or working resources of an entity;
4. Being a general partner in a partnership;
5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or
6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(77) "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.

(78) "Perennial stream":

(a) Means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff; and

(b) Does not mean "intermittent stream" or "ephemeral stream."

(79) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(80) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed that has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

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

(82) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond pursuant to 405 KAR Chapter 10 and that shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to the permit, including all disturbed areas. Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could be excluded from the permit area.

(83) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR 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 Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(84) "Person" is defined by KRS 350.010.

(85) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" includes 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 cabinet; 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 cabinet.

(86) "Previously mined area" means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

(87) "Prime farmland" means those lands defined by the Secretary of Agriculture in 7 C.F.R. 657 and that have been "historically used for cropland" as that phrase is defined in this section.

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

(89) "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.

(90) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations that could reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

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

- (92) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.
- (93) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.
- (94) "Public office" means a facility under the direction and control of a governmental entity that is open to public access on a regular basis during reasonable business hours.
- (95) "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, regardless of if the use is limited to certain times or days. The term includes any land leased, reserved, or held open to the public because of that use.
- (96) "Public road" means any publicly owned thoroughfare for the passage of vehicles.
- (97) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
- (98) "Reclamation" is defined by KRS 350.010.
- (99) "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.
- (100) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet pursuant to 405 KAR 16:200 and 18:200.
- (101) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.
- (102) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas.
- (103) "Renewable resource lands."
- (a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas that contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas; and
- (b) As used in 405 KAR 8:040, Section 26, "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.
- (104) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.
- (105) "Road":
- (a) 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 contiguous appendages 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; and
- (b) Does not mean pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR 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.
- (106) "SCS" means Soil Conservation Service.
- (107) "Secretary" is defined by KRS 350.010.
- (108) "Sedimentation pond":

- (a) Means a primary sediment control structure:
1. Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090; and
 2. That could include a barrier, dam, or excavated depression to:
 - a. Slow water runoff; and
 - b. Allow suspended solids to settle out; and
- (b) Does not mean secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.
- (109) "Shadow area" means the surface area overlying underground mine works and surface areas associated with auger and in situ mining.
- (110) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources including plant and animal life as further defined in paragraphs (a) and (b) of this subsection.
- (a) An environmental harm is imminent, if a condition, practice, or violation exists that:
1. Is causing environmental harm; or
 2. Could reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350; and
- (b) An environmental harm is significant if that harm is appreciable and not immediately repairable.
- (111) "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 could also be expressed as a percent or in degrees.
- (112) "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.
- (113) "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined by KRS 350.450(4)(c).
- (114) "SMCRA" means Surface Mining Control and Reclamation Act, 30 U.S.C. Chapter 25.
- (115) "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 four (4) master 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) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;
 - (c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and
 - (d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
- (116) "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that

describes, classifies, and interprets the soils for use. Soil surveys meet the standards of the National Cooperative Soil Survey.

(117) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(118) "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.

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

(120)

(a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;
2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and
3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area; and

(b) Does not mean the costs of acquiring the coal in place or the right to mine such coal in the absence of other investments as established in paragraph (a) of this subsection.

(121) "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

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

(123) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and 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.

(124) "Surface coal mining and reclamation operations" is defined by KRS 350.010.

(125) "Surface coal mining operations" is defined by KRS 350.010.

(126) "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.

(127) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water that are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(128) "Temporary diversion" means a diversion of a stream or overland flow that is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(129) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(130) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(131) "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.

(132) "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.

(133) "Transfer, assignment, or sale of permit 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 cabinet.

(134) "TRM" means Technical Reclamation Memorandum.

(135) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(136) "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.

(137) "USDA" means United States Department of Agriculture.

(138) "U.S. EPA" means United States Environmental Protection Agency.

(139) "USGS" means United States Geological Survey.

(140) "Valid existing rights":

(a) Means:

1. Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument that authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the 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 the permits being deemed to constitute good faith efforts to obtain the permits; or

b. Can demonstrate to the cabinet 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:

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; and

(b) Does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(141) "Water transmitting zone" means a body of consolidated or unconsolidated rocks that, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(142) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(143) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(18 Ky.R. 2460; 2837; eff. 4-3-1992; 19 Ky.R. 467; 1360; eff. 11-23-1992; 24 Ky.R. 667; 2622; eff. 6-10-1998; TAm eff. 8-9-2007; TAm eff. 7-6-2016; 44 Ky.R. 588, 993, 1274; eff. 1-5-2018; Crt eff. 7-3-2018.)