

405 KAR 24:001. Definitions for 405 KAR Chapter 24.

RELATES TO: KRS Chapter 350, 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. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 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. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 24.

Section 1. Definitions.

(1) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; 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 provided in this definition; 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, shipping areas; 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; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include 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:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(2) "Applicant" means any person(s) 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 all applicable administrative regulations.

(3) "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.

(4) "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.

(5) "Area", as used in 405 KAR 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.

(6) "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, secondary recovery systems.

(7) "Cabinet" is defined in KRS 350.010.

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

(9) "C.F.R." means Code of Federal Regulations.

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

(11) "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 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

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

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

(14) "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.

(15) "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 whether a permit or exploration approval may be issued.

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

(17) "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.

(18) "Federal lands" 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. It does not include Indian lands.

(19) "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, national natural landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.

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

(21) "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.

(22) "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.

(23) "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a state or national register of historic places, national historic landmarks, archaeological sites, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

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

(25) "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.

(26) "KAR" means Kentucky administrative regulations.

(27) "KRS" means Kentucky Revised Statutes.

(28) "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.

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

(30) "Operations" is defined in KRS 350.010.

(31) "Operator" is defined in KRS 350.010.

(32) "Overburden" is defined in KRS 350.010.

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

(34) "Person" is defined in KRS 350.010.

(35) "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 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.

(36) "Petitioner" means a person who submits a petition under 405 KAR 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 405 KAR Chapter 24 to terminate such a designation.

(37) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(38) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(39) "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

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

(41) "RAM" means Reclamation Advisory Memorandum.

(42) "Reclamation" is defined in KRS 350.010.

(43) "Renewable resource lands" means geographic areas which 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.

(44) "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 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. 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 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.

(45) "Secretary" is defined in KRS 350.010.

(46) "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.

(47) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(48) "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.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

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

(50)

(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.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(51) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(52) "Surface coal mining operations" is defined in KRS 350.010.

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

(54) "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.

(55) "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.

(56) "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, aboveground 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.

(57) "Valid existing rights" means:

(a) 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 which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. 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

2. 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.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) 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.

(58) "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.

(18 Ky.R. 2495; eff. 4-3-1992; Crt eff. 7-3-2018.)