

Reclamation Advisory Memorandum

RAM # 127

Kentucky Natural Resources and Environmental Protection Cabinet

Department for Surface Mining Reclamation and Enforcement

From: Carl E. Campbell, Commissioner

Date: September 8, 1997

Subject: Industrial/Commercial Postmining Land Use

Introduction

405 KAR 8:030 Section 37, 8:040 Section 37, 16:210 and 18:220 set forth the regulatory requirements for approval of an alternative postmining land use. 405 KAR 10:040 sets forth the regulatory requirements for release of bond. This document discusses certain of these requirements as applied to an industrial/commercial postmining land use, for the purpose of emphasizing and clarifying these requirements. This discussion is not intended to have any bearing upon requirements for highwall elimination and return to approximate original contour.

Permit Information

The application must include a postmining \and use plan that provides all the information required by Section 37(1) of 405 KAR 8:030 and 8:040. The plan must provide a sufficient basis for the cabinet to make the findings required by Section 4 of 405 KAR 16:210 and 18:220.

- The plan must identify the type of industrial or commercial use that the site is proposed to be developed to accommodate. The plan is not required to identify a specific business entity or entities proposed for the site, although the applicant may provide this information voluntarily and doing so may assist the cabinet in making the findings required by 405 KAR 16:210 (18 :220) Section 4.
- The plan must describe the proposed final grading, installation of utilities, and construction of public access, and describe how these are appropriate for the proposed type of industrial or commercial use.
- The application must discuss the consideration that has been given to making the proposed postmining land use plan consistent with the surface owner's future plans for the site and must include a copy of the surface owner's comments on the proposed type of industrial or commercial use.
- The application must discuss the consideration that has been given to making the postmining land use plan consistent with applicable state and local use plans and

programs and must include a copy of the comments of any agencies that would have to initiate, implement, approve, or authorize the proposed type of industrial or commercial use. The application must demonstrate that any zoning changes or approvals or other permits or licenses that are necessary for the proposed type of industrial or commercial use have been obtained.

- The application must describe how the site will be maintained until a business entity occupies the site.

Permit Approval

The cabinet may approve the proposed type of industrial or commercial postmining land use if it finds the specific criteria required by 405 KAR 16:210 (18:220) Section 4 are met with respect to that use:

- There is a reasonable likelihood that the land use will be achieved;
- The use will not be impractical or unreasonable;
- The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;
- The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;
- The proposed use will not involve unreasonable delays in implementation; and
- The proposed use will not cause or contribute to violation of federal, state, or local law.

Bond Release

Bond releases must meet all requirements of 405 KAR 10:040. The following provisions are applicable to bond release decisions regarding the capability of the reclaimed land to support the approved industrial/commercial postmining land use.

- **Phase I release.** If all other requirements applicable to Phase I bond release are met, a permit with an approved postmining land use of industrial/commercial will be eligible for a Phase I release when all final backfilling and grading work has been completed, all final drainage control has been established, and the site has been seeded and mulched, graveled, paved, or otherwise stabilized according to the approved permit. The use of vegetation on the permit for primary site stabilization will result in a five-year liability period prior to a Phase III release, unless a business entity occupies the site before the expiration of the five-year liability period. Revegetation for purely aesthetic purposes (landscaping, etc.) will not incur a five-year liability period.

- **Phase II release.** If all other requirements applicable to Phase II bond release are met, a permit will be eligible for a Phase II release when all utilities and public access have been provided to the site, and two years of the five-year liability period have expired if the permit is stabilized by revegetation.
- **Phase III release.** If all other requirements applicable to Phase III bond release are met, a permit will be eligible for a Phase III release upon occupation of the site by an industrial or commercial business entity of the type approved in the postmining land use plan, or upon expiration of the five-year liability period if the site is unoccupied and the permit is stabilized by revegetation.
- **Combined phase releases.** As with other postmining land uses, a permit or increment may be eligible for combined phase releases depending upon site specific conditions.

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