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REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Reclamation and Enforcement

4 (Amendment)

5 405 KAR 5:032. Permit requirements.

6 RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300

7 STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Energy
9 and Environment Cabinet to promulgate administrative regulations pertaining to noncoal mineral
10 operations to minimize their adverse effects on the citizens and the environment of the
11 commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative
12 regulations to establish effective programs for the control of surface soil disturbance in connection
13 with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to
14 promulgate reasonable administrative regulations for the reclamation of land disturbed or removed
15 in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective
16 program and standards for the conservation and use of mined land. This administrative regulation
17 specifies information to be submitted by the applicant relating to legal status, financial information,
18 general site information, map requirements, cultural and environmental resource information, and
19 mining and reclamation plans. This administrative regulation also addresses the waivers and
20 approvals necessary to conduct noncoal mineral operations, including those of other agencies, and
21 establishes provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation shall pertain to a person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements.

(a) A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas, including location of access roads, spoil or waste areas, and sedimentation ponds.

(b) Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an onsite investigation of the area with appropriate persons including appropriate representatives of the applicant.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Natural Resources, Division of Mine Reclamation and Enforcement, Noncoal Review Branch, 300 Sower Boulevard, Frankfort, KY 40601, or at one (1) of the following regional offices:

(a) [~~London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9011;~~

~~(b)~~] Madisonville Regional Office, 625 Hospital Drive, Madisonville, Kentucky 42431-1683;

(b)[~~(c)~~] Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1229;

(c)[~~(d)~~] Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9331; or

(d) Hazard Regional Office, 556 Village Lane, P.O. Box 851, Hazard, Kentucky 41702

1 [~~(e) Prestonsburg Regional Office, 3140 South Lake Drive, Suite 6, Prestonsburg,~~

2 ~~Kentucky 41653-1410~~].

3 Section 2. Identification of Interests. (1) Each permit application shall contain the names

4 and addresses of:

5 (a) The applicant, including phone number;

6 (b) The registered agent for service of process, if applicable, including phone number;

7 (c) Owners, partners, or if a corporation, officers or stockholders owning ten (10) percent

8 or more stock;

9 (d) The project engineer, along with registration number and name of associated firm;

10 (e) The company and engineer to which correspondence concerning the subject permit shall

11 be addressed;

12 (f) Surface owners of record within the area proposed for mining, including areas overlying

13 underground workings;

14 (g) Mineral owners of record within the area proposed for mining, including areas

15 overlying underground workings; and

16 (h) Surface owners of record within 500 feet of the proposed permit boundary and areas

17 overlying underground workings.

18 (2) If the company has undergone a name change or changes during the previous five (5)

19 years, the applicant shall list the names.

20 (3) The legal structure of the applicant shall be specified.

21 (4) If the business is owned by an individual or is a partnership, and is performed under an

22 assumed name, the applicant shall specify the county and state where the name is registered.

1 (5) The applicant shall list previous Kentucky permits held by the applicant or an
2 individual, partnership, or corporation associated with the applicant.
3 (6) The applicant shall provide the name of the contact person at the site, including phone
4 number.
5 (7) The applicant shall specify the type of application, along with the permit number.
6 Section 3. Bond Information. (1) If bond is required pursuant to 405 KAR 5:082, the
7 following information shall be provided in the permit application:
8 (a) The bond amount per acre;
9 (b) The total amount of bond; and
10 (c) The bond type.
11 (2) If a surety is used, the applicant shall provide the bond number and surety.
12 (3) If a certificate of deposit is used, the applicant shall provide the bank name and CD
13 number.
14 (4) If a letter of credit is used, the applicant shall provide the bank name and letter of credit
15 number.
16 Section 4. Equipment Inventory. The permit application shall contain a list of all
17 equipment, model numbers, and condition of the equipment proposed to be used for removing
18 overburden and reclaiming the affected area of the proposed mineral operation.
19 Section 5. Waivers and Approvals.
20 (1) If blasting will occur within 300 feet of an occupied dwelling or if mineral extraction
21 will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver
22 from the owner, acknowledging approval of the activity.

(2) Except where mine access roads or haul roads join the right-of-way, if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and required approvals from the appropriate agency or local government with jurisdiction over the road.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee shall not have continuing maintenance responsibility after permit release shall be required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit, pursuant to 401 KAR 4:010, shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, the applicant shall state this in the application to the Division of Mine Reclamation and Enforcement.

(8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6) shall be required.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representations, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map or an equivalent format which shall:

(1) Delineate the proposed permit area and areas, if applicable overlying proposed underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet of the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners;

(5) Delineate all proposed access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 10:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public

1 properties such as, parks, Wildlife Management Areas, and nature preserves, and utility lines on
2 the area to be affected, and within 1,000 feet of the proposed permit boundary;
3 (8) Locate sites listed on the National Register of Historic Places and known archaeological
4 sites;
5 (9) Delineate wetlands that may be affected by the proposed mineral operation;
6 (10) Show the drainage pattern on and away from the area to be affected, including the
7 direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and
8 the streams or tributaries to receive discharges from the proposed mineral operation;
9 (11) Show proposed pit area, sediment structures, storage areas, and other facilities and
10 features related to the mineral operation;
11 (12) Provide a north point arrow;
12 (13) Contain a legend, which shall:
13 (a) Provide the company name;
14 (b) Provide the application number;
15 (c) Provide the county and quadrangle names;
16 (d) Provide the site coordinates;
17 (e) Provide the site address;
18 (f) Provide the map scale and contour interval;
19 (g) Provide a description of the site location including:
20 1. The nearest stream; and
21 2. The distance and direction from the nearest road intersection or town;
22 (h) Identify each insignia, symbol, number, or letter used to designate features, facilities,
23 or areas;

1 (i) Provide acreage breakdowns of the various mineral operation features and facilities
2 including, pit areas, storage areas, sediment structures, access roads, and the total number of acres
3 of area to be affected; and
4 (j) Specify the deposit to be mined; and
5 (14) Provide a signed, notarized statement that the map has been prepared and certified by
6 a professional engineer, registered pursuant to the provisions of KRS Chapter 322. This statement
7 shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my
8 knowledge and belief all the information required by the mineral operation laws and administrative
9 regulations of the state". This statement shall include:
10 (a) The engineer's registration number; and
11 (b) The date on which the map was prepared.
12 Section 9. General Site Information. The permit application shall contain the following
13 general site information:
14 (1) Location of the mineral operation to include:
15 (a) Latitude and longitude;
16 (b) The nearest community;
17 (c) The name of the nearest stream;
18 (d) The nearest public road intersection; and
19 (e) The name of the United States Geological Survey quadrangle or quadrangles, in which
20 the proposed mineral operation will occur;
21 (2) A county by county list of the types of disturbances planned, accompanied by the
22 acreage to be involved with each disturbance;
23 (3) Specification of the mineral to be extracted;

1 (4) Specification of the major watershed or watersheds, which will be affected, by the
2 proposed mineral operation;
3 (5) Specification if active discharges exist that may affect the proposed mineral operation.
4 If so, provide the following information:
5 (a) The pH of the discharge; and
6 (b) The source of the discharge;
7 (6) Specification if underground workings will be encountered, and the distance, in feet, to
8 the nearest active deep mine; and
9 (7) Specification of the types of disturbances planned for the proposed mineral operation.
10 Section 10. Cultural Resource Information. The applicant shall specify if sites listed on the
11 National Register of Historic Places or known archaeological sites exist within, or adjacent to, the
12 proposed permit boundary.
13 Section 11. Environmental Resources Information.
14 (1) The applicant shall indicate if there are Wildlife Management Areas, wildlife refuges,
15 nature preserves, state or national parks, state or national forests, or similar public lands within the
16 vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them
17 on the map.
18 (2) The applicant shall indicate if disturbances within the channel of, or within 100 feet of,
19 an intermittent or perennial stream are proposed.
20 (3) The applicant shall indicate if there are outstanding resource waters, pursuant to 401
21 KAR 10:031, within the vicinity of the proposed mineral operation. If so, the applicant shall
22 delineate these waters on the map.

1 Section 12. Surface Water Quantity and Quality Protection Plan. The permit application
2 shall contain a surface water quantity and quality protection plan, which shall demonstrate to the
3 satisfaction of the cabinet compliance with 405 KAR 5:050 and 405 KAR 5:055, and shall include
4 the following information:
5 (1) The number of sedimentation ponds proposed, accompanied by designs, drawings, and
6 specifications for each structure to include:
7 (a) The structure number;
8 (b) The number of acres to be disturbed within the drainage area;
9 (c) The number of acres in the drainage area;
10 (d) Sediment storage capacity;
11 (e) Storage capacity at the principal spillway;
12 (f) Storage capacity at the emergency spillway;
13 (g) Spillway capacities;
14 (h) Structure height measured from the downstream toe; and
15 (i) All other engineering designs, dimensions, and calculations required to demonstrate
16 compliance with 405 KAR 5:050 and 5:055.
17 (2) If sediment removal becomes necessary, the permit application shall contain a
18 description of how sediment shall be removed and disposed.
19 (3) The applicant shall state if any permanent sedimentation ponds are proposed.
20 (4) The permit application shall contain descriptions, designs, diagrams, figures, and
21 calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment that demonstrates compliance with 405 KAR 5:055.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials that shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 18. Land Use Plan.

1 (1) The permit application shall contain a land use plan, which demonstrates compliance
2 with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:
3 (a) Specifies the premining use or uses within, and adjacent to, the proposed permit
4 boundary;
5 (b) Specifies the intended postmining land use for the proposed permit area; and
6 (c) If the postmining land use is different from the premining land use, shall provide a
7 discussion justifying the change.
8 (2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:002.
9 Section 19. Revegetation Plan. The permit application shall contain a revegetation plan
10 which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of
11 405 KAR 5:070, and is consistent with 405 KAR 5:065 and that provides the following
12 information:
13 (1) Identification of the material that will be redistributed on the regraded area as a plant
14 growth medium;
15 (2) Permanent grass species, permanent legume species, and quick cover species to be
16 seeded during revegetation, along with their application rates (pounds/acre);
17 (3) Tree and shrub species to be planted during revegetation, along with their stocking rates
18 (number/acre); and
19 (4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or
20 other soil stabilization practices to be incorporated.
21 Section 20. Designs and Attachments.
22 (1) The permit application shall be accompanied by appropriate descriptions, designs,
23 diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed

1 sediment control structures, as required under Sections 12 and 13 of this administrative regulation;
2 spoil disposal fills; access and haul roads; stream crossings; and ditches.
3 (2) Access and haul road designs shall conform to the specifications established in 405
4 KAR 5:040.
5 (3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance
6 with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky
7 registered professional engineer.
8 Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine.
9 (1) An applicant for a new permit required pursuant to KRS Chapter 350, shall publish at
10 least once, a public notice of the application for that permit.
11 (a) The publication shall be made by advertisement in the newspaper of largest bona fide
12 circulation, in the county where the proposed mining site is located.
13 (b) If the proposed mining site is in more than one (1) county, publication shall be required
14 in the newspaper of largest bona fide circulation in each county.
15 (2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior
16 to the filing of the permit application with the department.
17 (3) The public notice of the intention to file an application shall be entitled, "Notice of
18 Intention to Mine Noncoal Minerals", and may be in a manner and form prescribed by the
19 department and shall include at a minimum the following:
20 (a) Name and address of the applicant;
21 (b) Permit application number;
22 (c) The location of the proposed mining site; and

1 (d) A brief description of the kind of mining activity proposed, together with a statement
2 of the amount of acreage affected by the proposed mineral operations.
3 (4) The applicant for a new permit required by KRS Chapter 350 shall establish the date
4 and place that the "Notice of Intention to Mine Noncoal Minerals" was published, by attaching to
5 the application proof of the time, place, and content of the published notice.
6 Section 22. Permit Revisions. A revision to a permit shall be obtained if the mineral
7 permittee desires to modify the mineral operations or make changes to the original permit that does
8 not involve increased acreage. The following stipulations shall apply to permit revisions:
9 (1) The application for revision shall be filed with the cabinet and approved prior to the
10 date on which the mineral permittee expects to revise the mineral operation;
11 (2) The term of a permit shall remain unchanged by a revision; and
12 (3) The application for revision shall be submitted using the "Application for Surface
13 Disturbance Mining Permit Noncoal Mining", Form NCR-2.
14 Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet
15 may amend a valid existing permit, so as to increase the permitted area to be affected by mineral
16 operations under the permit. Applications for amendment may be filed at any time during the term
17 of the permit.
18 (1) The mineral permittee shall file an application in the same form and with the same
19 content as required for an original permit pursuant to this administrative regulation.
20 (2) The mineral permittee may need to file a supplemental bond with the cabinet in an
21 amount to be determined, as provided under 405 KAR 5:082, for each additional acre or fraction
22 of an acre.

1 Section 24. Permit Renewals. A valid permit issued pursuant to 405 KAR Chapter 5 shall
2 carry with it, the right of successive renewal upon expiration of the term of the permit. Successive
3 renewal shall be allowed only for those areas specifically within the boundaries of the existing
4 permit.

5 (1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60)
6 days prior to the expiration date of the permit.

7 (2) If an application for renewal of a valid existing permit includes a proposal to extend the
8 mineral operation beyond the boundaries authorized pursuant to the existing permit, the portion of
9 the application that addresses a new land area shall be subject to all requirements of 405 KAR
10 Chapter 5, and a new original permit application shall be required for these areas.

11 (3) The permit renewal shall be issued if the following requirements are met:

12 (a) The application for renewal shall be submitted using the "Application for Surface
13 Disturbance Mining Permit Noncoal Mining", Form NCR-2;

14 (b) The mineral permittee shall submit all revised or updated information required by the
15 cabinet, including at a minimum:

16 1. An updated operational plan current to the date of request for renewal; and

17 2. Specification of the status and extent of all mineral operations on the existing permit
18 area;

19 (c) The present mineral operation is in compliance with KRS Chapter 350 and 405 KAR
20 Chapter 5; and

21 (d) The mineral permittee shall provide additional bond required in accordance with 405
22 KAR 5:082.

1 Section 25. Permit Succession. (1) There shall not be succession on the permitted area
2 without the prior written approval of the cabinet.
3 (2) The initial mineral permittee shall notify the cabinet, in writing, of a proposed
4 succession.
5 (3) The cabinet may release the first mineral operator from reclamation responsibility
6 pursuant to 405 KAR Chapter 5 as to that particular mineral operation, except that:
7 (a) There shall not be release until the successive mineral operator has been issued a permit
8 and has otherwise complied with the requirements of 405 KAR Chapter 5; and
9 (b) The successor shall immediately assume, as a part of his obligation pursuant to 405
10 KAR Chapter 5, all liability for the reclamation of the area affected by the former permitted
11 mineral operation.
12 (4) If the cabinet has given its prior written approval to the succession, a successor in
13 interest to a mineral permittee who applies for a successor permit within thirty (30) days of
14 succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the
15 amount of the bond of the original mineral permittee, may continue mineral operations according
16 to the approved permit plan of the original mineral permittee until the successor's application is
17 granted or denied.
18 (5) The bond coverage provided by the successor in interest shall take effect immediately
19 upon the commencement of mineral operations by the successor.
20 Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit
21 application, the cabinet shall make one (1) of three (3) decisions:
22 (a) To technically withdraw the permit application;
23 (b) To deny the permit application; or

1 (c) To approve the permit application.

2 (2) If the permit application is technically withdrawn or denied, the thirty (30) working day
3 period shall be stopped on the date of this decision.

4 (3) The time period shall restart on the date the permit application is returned with
5 deficiencies corrected.

6 (4) If the application is not approved, the cabinet shall state the reasons, in writing, for
7 which the application is not approved; and the cabinet may propose modifications, delete areas, or
8 reject the entire application.

9 (5) If the mineral permittee disagrees with the decision of the cabinet the mineral permittee
10 he or she may, by written notice, request a hearing by the cabinet, pursuant to 400 KAR 1:120.

11 (6) The cabinet shall notify the applicant by registered mail within twenty (20) days after
12 a decision is made.

13 Section 27. Criteria for Permit Approval and Denial. An application for a permit and
14 mineral operation shall not be approved unless the application affirmatively demonstrates and the
15 cabinet determines on the basis of information stated in the application, and other available
16 pertinent information, that:

17 (1) The permit application is accurate, complete, and that the applicant has complied with
18 all requirements of 405 KAR Chapter 5;

19 (2) The mineral operation proposed can be carried out under the method of mineral
20 operation outlined in the permit application in a manner that will satisfy all requirements of 405
21 KAR Chapter 5;

22 (3) The proposed mineral operation shall not constitute a hazard to, or do physical damage
23 to life, to an occupied dwelling, public building, school, church, cemetery, commercial or

1 institutional building, public road, stream, lake, other public property, or to members of the public
2 or their real and personal property.
3 (a) All necessary measures shall be included in the method of mineral operation in order to
4 eliminate the hazard or damage.
5 (b) If it is not technologically feasible to eliminate the hazard or damage by adopting
6 specifications in the method of mineral operation, then that part of the mineral operation that
7 constitutes the cause of the hazard or damage shall be deleted from the application and mineral
8 operation;
9 (4) The proposed mineral operation shall not adversely affect natural hazard lands or a wild
10 river established pursuant to KRS Chapter 146;
11 (5) The proposed mineral operation shall not be inconsistent with other mineral operations
12 anticipated in areas adjacent to the proposed permit area; and
13 (6) The proposed permit area is:
14 (a) Not included within the boundaries of the National Park System, the National Wildlife
15 Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers
16 Act (16 U.S.C. 1276(a)), and the National Recreation Areas designated by Act of Congress;
17 (b) Not included within 300 feet, measured horizontally, of a public park, public building,
18 school, church, community, or institutional building;
19 (c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be
20 provided to a cemetery at all times;
21 (d) Not within 100 feet, measured horizontally, of the outside right-of-way line of a public
22 road, except:
23 1. Where mine access roads or haul roads join the right-of-way; or

1 2. Where the cabinet allows the roads to be relocated or allows disturbances within 100
2 feet of the roads, once the applicant has obtained necessary approval from the governmental
3 authority with jurisdiction over the public road, as required under Section 5 of this administrative
4 regulation; and if after public notice and opportunity for public hearing a written finding is made,
5 by the cabinet, that the interest of the public and the landowners affected thereby shall be protected;
6 (e) Not within the distances specified in Section 5 of this administrative regulation,
7 measured horizontally, of an occupied dwelling unless the applicant submits with the permit
8 application a written affidavit from the owner of the dwelling specifying an allowance, as required
9 by Section 5 of this administrative regulation.
10 1. This waiver shall be knowingly and intelligently executed, and be separate from a lease
11 or deed, unless the lease or deed contains an explicit waiver.
12 2.a. A waiver obtained from previous owners shall remain effective for subsequent owners
13 who had actual or constructive knowledge of the existing waiver when the dwelling was purchased.
14 b. A subsequent owner shall be deemed to have constructive knowledge if the waiver has
15 been properly filed in public property records pursuant to KRS 382.110 or if the mining has
16 proceeded to within the distance limit prior to the date of purchase; and
17 (f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits
18 and approvals, required pursuant to Section 5 of this administrative regulation, have been obtained
19 authorizing mineral operations at a closer distance to, or through, the stream. The authorization
20 shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the
21 authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 have
22 been satisfied.

1 Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain
2 certain conditions necessary to ensure that the mineral operation shall be conducted in compliance
3 with KRS Chapter 350 and 405 KAR Chapter 5.
4 (2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and
5 405 KAR Chapter 5 and conditions of the permit.
6 (3) Each permit shall be issued for a fixed term not to exceed five (5) years.
7 Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose
8 permit has been revoked or suspended shall not be eligible to receive another permit or begin
9 another mineral operation, or be eligible to have suspended permits or mineral operations
10 reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405
11 KAR Chapter 5 with respect to all permits issued him.
12 (2) A mineral operator or person whose surface coal mining operation permit has been
13 revoked or suspended shall not be eligible to receive another permit or begin another mineral
14 operation, or be eligible to have suspended permits or mineral operations reinstated until he has
15 complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters [~~1, 3, and~~] 7
16 through 24 with respect to all surface coal mining operation permits issued him.
17 (3) A mineral operator or person who has forfeited any bond filed with the cabinet for a
18 mineral operation or a surface coal mining operation shall not be eligible to receive another permit
19 or begin another mineral operation unless:
20 (a) The land for which the bond was forfeited has been reclaimed without cost to the state;
21 or

1 (b) The mineral operator or person has paid a sum determined by the cabinet after the
2 Division of Abandoned Mine Lands has prepared an estimate of the cost to reclaim the lands, based
3 upon site specific conditions.
4 (4) If the applicant, mineral operator, a subcontractor, or a person acting on behalf of the
5 applicant has either conducted activities with a demonstrated pattern of willful violations of 405
6 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit
7 application shall be denied. A mineral permittee shall not be relieved of responsibility with respect
8 to a permit issued to him.
9 (5) If the cabinet determines that an activity of the applicant regulated pursuant to 405 KAR
10 Chapter 5 is currently in violation of KRS Chapters 149, 151, 224, 350 through 353 [~~354~~], 400
11 KAR Chapters 1 through 3, 401 KAR Chapters 4 through 100, 402 KAR Chapter 3, or 405 KAR
12 Chapters 2 [~~1~~] through 30, then the cabinet shall require the applicant, before the issuance of the
13 permit, to either:
14 (a) Submit proof that can be substantiated by the cabinet that the violation has been
15 corrected, or is in the process of being corrected in good faith; or
16 (b) Establish, by proof that can be substantiated by the cabinet, that the applicant has filed
17 and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of
18 the violation.
19 (6) If the applicant submits the proof specified pursuant to subsection (5) of this section,
20 then the cabinet may issue the permit with an appropriate condition that either the reclamation
21 work be continued in good faith until completion or that if the applicant loses his action contesting
22 the violation that the violation be corrected within a specified time. Failure to comply with a
23 condition shall be grounds for revocation of the permit.

1 (7) If the applicant disagrees with the cabinet's determination pursuant to this section, then
2 he or she has the right to request an administrative hearing pursuant to 400 KAR 1:120.
3 Section 30. Permit Conference and Public Comment. (1) Procedures for requests. A person
4 whose interests are or may be adversely affected by the issuance of the application, including the
5 officer or head of any federal, state or local government agency or authority, may request that the
6 cabinet hold an informal conference on an application for a permit. The request shall:
7 (a) Briefly summarize the issues to be raised by the requester at the conference; and
8 (b) Be filed with the cabinet within fifteen (15) days of the newspaper advertisement.
9 (2)(a) The conference shall be held at the Division of Mine Reclamation and Enforcement.
10 (b) The conference shall be held within fifteen (15) days of the date of the request. The
11 date, time, and location of the conference shall be sent to the applicant and parties requesting the
12 conference.
13 (c) The conference shall be conducted by a representative of the cabinet who shall accept
14 oral or written statements and other relevant information from a party to the conference.
15 (d) If all parties requesting the conference stipulate agreement before the requested
16 conference and withdraw their requests, the conference shall not be held.
17 (e) All comments and evidence shall be taken into consideration by the Division of Mine
18 Reclamation and Enforcement in Frankfort before a final decision is made on the disposition of
19 the application.
20 (f) The record shall be maintained and shall be accessible to the parties during the life of
21 the mineral operation.

1 (3) A person whose interests are or may be adversely affected by the issuance of the
2 application, including the officer or head of a federal, state, or local government agency or
3 authority, may submit written comments to the cabinet.

4 Section 31. Existing Mineral Operations. (1) [~~Existing mineral operations that were not~~
5 ~~permitted or regulated prior to February 1995 shall obtain a permit within 180 days of February~~
6 ~~1995.~~

7 ~~(2)~~] The cabinet may grant limited variances from the distance limitations of Section 27(6)
8 of this administrative regulation if an existing disturbance within those limits was made prior to
9 February 1995 by an existing mineral operation that was not permitted or regulated prior to
10 February 1995. These variances shall only be granted if practical and reasonable remedial
11 compliance measures cannot be identified.

12 (2)[~~(3)~~] The distance limitations of Section 27(6) of this administrative regulation shall not
13 apply if lesser distance limitations have been approved in a valid permit issued prior to February
14 1995. The distance limitations established in those permits shall continue to apply.

15 Section 32. Incorporation by Reference. (1) "Application for Surface Disturbance Mining
16 Permit Noncoal Mining, NCR-2", July 2005, is incorporated by reference.

17 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
18 law, at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601,
19 Monday through Friday, 8 a.m. to 4:30 p.m.

405 KAR 5:032 approved for filing.
Pages (1-23)

9/13/2019
Date

Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 5:032
Contact Person: Michael Mullins
Contact number: (502) 782-6720
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to obtain a permit to mine noncoal minerals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. This administrative regulation conforms to the authorizing statutes by establishing a reasonable permitting program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statues by establishing a permitting system for the mining of noncoal minerals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment removes incorrect citations to administrative regulations that have been repealed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove incorrect citations and to revise the list of regional offices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by ensuring the citations used in the administrative regulation are correct.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. These amendments are necessary to correct citations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates a noncoal mine within Kentucky. There are approximately 153 noncoal operators in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will need to review the list of field offices as well as the corrected citations in Section 29(5) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit by having a correct list of filed office locations as well as corrected citations as it relates to violations that could prevent entities from obtaining a permit.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that operate an noncoal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 5:032 Contact number: (502) 782-6720
Contact Person: Michael Mullins, Reg. Coordinator Email: Michael.mullins@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will apply to the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.029, 350.240, 350.300.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.