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Emily B Caudill
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Permits

4 (Amendment)

5 405 KAR 10:001. Definitions for 405 KAR Chapter 10.

6 RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5,
7 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. Chapter 25,
8 1253, 1255, 1291

9 STATUTORY AUTHORITY: KRS 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part
10 657, 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, 40
11 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291

12 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet
13 to promulgate administrative regulations pertaining to surface coal mining and reclamation
14 operations under the permanent regulatory program. This administrative regulation establishes
15 definitions for terms used in 405 KAR Chapter 10.

16 Section 1. Definitions. (1) "Acquisition" means the purchase, lease, or option on the land
17 for the purpose of conducting or allowing through resale, lease, or option the action of conducting
18 surface coal mining and reclamation operations.

19 (2) "Active Acre" means an acre of land or fraction thereof, permitted and bonded for
20 surface disturbance pursuant to a surface coal mining permit as of July 1, 2013. Active acre does
21 not include:

1 (a) Acreage contained in a permit for which the entire permit has not been initially
2 disturbed by the permittee after permit issuance;
3 (b) Acreage contained in a permit, or increment thereof, that has completed initial
4 reclamation and received a minimum of a Phase 1 bond release; or
5 (c) Undisturbed acreage completely released from liability as a result of a bond release or
6 bond reduction.
7 (3) "Actuarial soundness" is defined by KRS 350.500(1).
8 (4) "Adjacent area" means land located outside the affected area or permit area, depending
9 on the context in which "adjacent area" is used, where air, surface, or groundwater, fish, wildlife,
10 vegetation, or other resources protected by KRS Chapter 350 could be adversely impacted by
11 surface coal mining and reclamation operations.
12 (5) "Affected area" means any land or water area that is used to facilitate, or is physically
13 altered by, surface coal mining and reclamation operations. The affected area includes:
14 (a) The disturbed area;
15 (b) Any area upon which surface coal mining and reclamation operations are conducted;
16 (c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation
17 operations;
18 (d) All areas covered by new or existing roads used to gain access to, or for hauling coal to
19 or from, surface coal mining and reclamation operations, except as established in this definition;
20 (e) Any area covered by surface excavations, workings, impoundments, dams, ventilation
21 shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks,
22 tailings, holes or depressions, repair areas, storage areas, or shipping areas;

1 (f) Any areas upon which are sited structures, facilities, or other property or material on
2 the surface resulting from, or incident to, surface coal mining and reclamation operations;
3 (g) The area located above underground workings associated with underground mining
4 activities;
5 (h) Auger mining or in situ mining; and
6 (i) Every road used for the purposes of access to, or for hauling coal to or from, surface
7 coal mining and reclamation operations, unless the road:
8 1. Was designated as a public road pursuant to the laws of the jurisdiction in which it is
9 located;
10 2. Is maintained with public funds and constructed in a manner similar to other public roads
11 of the same classification within the jurisdiction; and
12 3. There is substantial (more than incidental) public use.
13 (6) "Applicant" means any person seeking a permit, permit revision, permit amendment,
14 permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface
15 coal mining and reclamation operations pursuant to KRS Chapter 350 and all applicable
16 administrative regulations.
17 (7) "Cabinet" is defined by KRS 350.010(10).
18 (8) "C.F.R." means Code of Federal Regulations.
19 (9) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous,
20 subbituminous, or lignite by ASTM Standard D 388-77.
21 (10) "Coal mined and sold" means coal severed or removed as a result of surface coal
22 mining operations and subsequently sold, transferred, or used by the permittee or operator.

1 (11) "Collateral bond" means an indemnity agreement in a sum certain payable to the
2 cabinet executed by the permittee and supported by the deposit with the cabinet of cash, negotiable
3 certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to
4 transact business in the United States.
5 (12) "Cropland" means land used for the production of adapted crops for harvest, alone or
6 in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops,
7 nursery crops, orchard crops, and other similar specialty crops.
8 (13) "Day" means calendar day unless otherwise specified to be a working day.
9 (14) "Department" means the Department for Natural Resources.
10 (15) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed
11 or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal
12 waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until
13 reclamation is complete and the performance bond or other assurance of performance required by
14 405 KAR Chapter 10 is released.
15 (16) "Dormancy fee" means the annual fee established in KRS 350.518(2)(f).
16 (17) "FDIC" means Federal Deposit Insurance Corporation.
17 (18) "Federal lands" means any lands, including mineral interests, owned by the United
18 States, without regard to how the United States acquired ownership of the lands or which agency
19 manages the lands. It does not include Indian lands.
20 (19) "Final disposition" means the status of an enforcement action taken by the cabinet
21 pursuant to KRS Chapter 350 for which a final secretary's order has been entered and the time for
22 appeal has expired or all appeals have been exhausted, or an agreed order has been entered.
23 (20) "FSLIC" means Federal Savings and Loan Insurance Corporation.

1 (21) "Full-cost bonding" means performance bonds that have been submitted by a
2 permittee for its surface coal mining operation permits in lieu of participation and membership in
3 the Kentucky Reclamation Guaranty Fund.
4 (22) "Historically used for cropland" means land that:
5 (a) Has been used for cropland for any five (5) years or more out of the ten (10) years
6 immediately preceding the:
7 1. Application; or
8 2. Acquisition of the land for the purpose of conducting surface coal mining and
9 reclamation operations;
10 (b) Would likely have been used as cropland for any five (5) out of the last ten (10) years
11 immediately preceding the acquisition or the application but for some fact of ownership or control
12 of the land unrelated to the productivity of the land; or
13 (c) The cabinet determines, on the basis of additional cropland history of the surrounding
14 land and the land under consideration, are clearly cropland but fall outside the specific five (5)
15 years in ten (10) criterion.
16 (23) "Impoundment" means a closed basin, naturally formed or artificially built, which is
17 dammed or excavated for the retention of water, sediment, or waste.
18 (24) "KRGF" means the Kentucky Reclamation Guaranty Fund.
19 (25) "Land use" means specific functions, uses, or management-related activities of an
20 area, and could be identified in combination when joint or seasonal uses occur and could include
21 land used for support facilities that are an integral part of the use. In some instances, a specific use
22 can be identified without active management.

1 (26) "Long term treatment" means the use of any active or passive water treatment
2 necessary to meet water quality effluent standards, but does not include Total Suspended Solids or
3 Total Dissolved Solids, at the time a permit or any affected permit increment attains phase 1 bond
4 release standards as determined by the cabinet pursuant to 405 KAR 10:040.
5 (27) "Member" means a permittee in the Kentucky Reclamation Guaranty Fund.
6 (28)[(~~27~~)] "Non-production fee" means the annual fee established in KRS 350.518(2)(e).
7 (29)[(~~28~~)] "Notice of noncompliance and order for remedial measures" means a written
8 document and order prepared by an authorized representative of the cabinet that establishes with
9 specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit
10 conditions that the authorized representative of the cabinet determines to have occurred based upon
11 an inspection, and the necessary remedial actions, if any, and the time schedule for completion
12 thereof, necessary and appropriate to correct the violations.
13 (30)[(~~29~~)] "Operations" is defined by KRS 350.010(6).
14 (31)[(~~30~~)] "Operator" is defined by KRS 350.010(8).
15 (32)[(~~31~~)] "Opt-out" means the decision by a permittee to not participate in the KRGF and
16 to provide full-cost bonding pursuant to 405 KAR 10:080.
17 (33)[(~~32~~)] "Order for cessation and immediate compliance" means a written document and
18 order issued by an authorized representative of the cabinet when:
19 (a) A person to whom a notice of noncompliance and order for remedial measures was
20 issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of
21 noncompliance and order for remedial measures within the time limits set therein, or as
22 subsequently extended; or

1 (b) The authorized representative finds, on the basis of a cabinet inspection, any condition
2 or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition
3 of a permit or exploration approval that:
4 1. Creates an imminent danger to the health or safety of the public; or
5 2. Is causing or can reasonably be expected to cause significant, imminent environmental
6 harm to land, air, or water resources.
7 (34)[~~(33)~~] "ORGF" means the Office of the Reclamation Guaranty Fund.
8 (35)[~~(34)~~] "Owned or controlled" and "owns or controls" mean any one (1) or a
9 combination of the relationships established in paragraphs (a) and (b) of this definition:
10 (a)1. Being a permittee of a surface coal mining operation;
11 2. Based on instruments of ownership or voting securities, owning of record in excess of
12 fifty (50) percent of an entity; or
13 3. Having any other relationship that gives one (1) person authority directly or indirectly
14 to determine the manner in which an applicant, an operator, or other entity conducts surface coal
15 mining operations; and
16 (b) One (1) of the following relationships, which constitutes ownership or control unless a
17 person demonstrates that the person subject to the presumption does not in fact have the authority
18 directly or indirectly to determine the manner in which the relevant surface coal mining operation
19 is conducted:
20 1. Being an officer or director of an entity;
21 2. Being the operator of a surface coal mining operation;
22 3. Having the ability to commit the financial or real property assets or working resources
23 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.

(36)[~~(35)~~] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund (405 KAR 10:070, KRS 350.595, and 350.500 – 350.521), 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.

(37)[~~(36)~~] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(38)[~~(37)~~] "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 includes 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.

(39)[~~(38)~~] "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.

1 (40)[(39)] "Person" is defined by KRS 350.010(9).

2 (41)[(40)] "Person having an interest which is or may be adversely affected" or "person
3 with a valid legal interest" includes any person:

4 (a) Who uses any resource of economic, recreational, aesthetic, or environmental value that
5 could be adversely affected by coal exploration or surface coal mining and reclamation operations,
6 or by any related action of the cabinet; or

7 (b) Whose property is or could be adversely affected by coal exploration or surface coal
8 mining and reclamation operations, or by any related action of the cabinet.

9 (42)[(41)] "Prime farmland" means those lands defined by the Secretary of Agriculture in
10 7 C.F.R. 657 and that have been "historically used for cropland".

11 (43)[(42)] "Reclamation" is defined by KRS 350.010(12).

12 (44)[(43)] "Secretary" is defined by KRS 350.010(11).

13 (45)[(44)] "SMCRA" means Surface Mining Control and Reclamation Act, 30 U.S.C.
14 Chapter 25 of 1977 (PL 95-87), as amended.

15 (46)[(45)] "Surety bond" means an indemnity agreement in a sum certain, payable to the
16 cabinet and executed by the permittee, which is supported by the performance guarantee of a
17 corporation licensed to do business as a surety in the Commonwealth of Kentucky.

18 (47)[(46)] "Surface coal mining and reclamation operations" is defined by KRS
19 350.010(3).

20 (48)[(47)] "Surface coal mining operations" is defined by KRS 350.010(1).

21 (49)[(48)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter,
22 means organic or inorganic materials carried or held in suspension in water which are retained by

1 a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water
2 and analyses (40 C.F.R. 136).
3 (50)[~~(49)~~] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).
4 (51)[~~(50)~~] "Topsoil" means the A and E soil horizon layers of the four (4) master soil
5 horizons.
6 (52)[~~(51)~~] "U.S. EPA" means United States Environmental Protection Agency.
7 (53)[~~(52)~~] "Voluntary Bond Pool" is defined by KRS 350.500(5).
8 (54)[~~(53)~~] "Willfully" and "willful violation" mean that a person acted either intentionally,
9 voluntarily, or consciously, and with intentional disregard or plain indifference to legal
10 requirements, in authorizing, ordering, or carrying out an act or omission that constituted a
11 violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition,
12 or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS
13 Chapter 350, or 405 KAR Chapters 7 through 24.

405 KAR 10:001 approved for filing.
Pages (1-10)

3/13/2019
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 April 24, 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 April 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 10:001
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 provides for the defining of certain essential terms used in 405 KAR Chapter 10

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 10 and will assist in the accurate interpretation of those administrative regulations.

(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 adds a definition for "long term treatment".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly define what is meant by the term "long term treatment" when used in 405 KAR Chapter 10.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by defining the word "long term treatment" to be used in 405 KAR Chapter 10.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to comply with requested changes to the cabinet's permanent program related to long term treatment bonding.

(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 surface coal mine operation that is conducting long-term treatment within Kentucky.

This provision would also apply to the Department for Natural Resources and the Division of Water.

(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 use the definition for the term "long term treatment" correctly in interpreting the amendments to 405 KAR 10:015.

(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 standard cost increase associated with the proposed amendments. As it relates the amendments in 405 KAR 10:015 and this administrative regulation as a whole, any additional cost to a permittee performing long term treatment will be reflected in the amount of the financial assurance instrument which is going from a multiplier of 20 to 25 for annual treatment costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in question (3) above will have a clear definition for the term "long term treatment".

(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 a coal mine will be required to use the same definition of "long term treatment".

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 10:001 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? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Division of Water.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 350.500 - 350.521, 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, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291.

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 would 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.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation No.: 405 KAR 10:001 Contact number: (502) 782-6720
Contact Person: Michael Mullins, Reg. Coordinator Email: Michael.mullins@ky.gov

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and KRS 350.060.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of Federal Regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will bring Kentucky's mining program closer in line with the federal program.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA