

350.085 Denial of permits and operations -- Deletion of land areas.

- (1) No application for a permit and no operation shall be approved or allowed by the cabinet if there is found on the basis of the information set forth in the application that the requirements of this chapter or administrative regulations will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading, or reclamation of the affected area can be carried out consistent with the purpose of this chapter.
- (2) If the cabinet finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the Commonwealth with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, or acid water pollution cannot feasibly be prevented, the cabinet may delete the part of the land described in the application upon which that overburden exists.
- (3) Subject to valid existing rights, no surface coal mining operations except those which existed on or before August 4, 1977, shall be permitted within three hundred (300) feet from any occupied dwelling unless waived by the owner, nor within three hundred (300) feet of any public building, school, church, community, or institutional building, public park, or within one hundred (100) feet of a cemetery. The cabinet shall not issue a permit if it finds that the operation will constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property. The cabinet shall delete the areas from the permit application or operation.
- (4) Subject to valid existing rights, no surface coal mining operations except those which existed on or before August 4, 1977, shall be permitted within one hundred (100) feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The cabinet shall permit the roads to be relocated or the area affected to lie within one hundred (100) feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interest of the public and the affected land owner will be protected, and shall not approve the application for a permit where the surface coal mining operation will adversely affect a wild river established pursuant to KRS Chapter 146, a state park or place listed on the National Register of Historic Places unless adequate screening and other measures as approved by the cabinet are incorporated into the permit application.
- (5) Subject to valid existing rights, no surface coal mining operations except those which existed on August 4, 1977, shall be permitted on any privately owned lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act and national recreation areas designated by Act of Congress.
- (6) If based on the information provided pursuant to KRS 350.060(3)(h) and other relevant information, the cabinet finds that any surface coal mining and reclamation operation owned or controlled by the applicant is currently in

violation of this chapter or other requirements listed pursuant to KRS 350.060(3)(h), the cabinet shall not issue the permit or permit renewal until the applicant submits proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected. It shall be grounds to deny a permit or permit renewal if the cabinet, based on any information available to it and after a hearing, makes a finding that the applicant, or the operator specified in the application has demonstrated a pattern of willful violations pursuant to KRS 350.130(3).

- (7) The prohibition of subsection (6) of this section shall not apply to a permit applicant with a violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for and under a permit for remaining held by the applicant. As used in this subsection, the term "violation" has the same meaning as the term has under subsection (6). After September 30, 2004, the period of authority of this subsection shall be coincident with the period of authority of sec. 510(e) of Pub. L. No. 95-87, the "Surface Mining Control and Reclamation Act of 1977," as amended, 30 U.S.C. sec. 1260(e).

Effective: March 18, 2005

History: Amended 2005 Ky. Acts ch. 114, sec. 1, effective March 18, 2005. -- Amended 1994 Ky. Acts ch. 172, sec. 2, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 210, sec. 3, effective July 13, 1990. -- Amended 1980 Ky. Acts ch. 62, sec. 8. -- Amended 1978 Ky. Acts ch. 330, sec. 16, effective May 3, 1978. -- Amended 1974 Ky. Acts ch. 69, sec. 3 and ch. 74, Art. III, sec. 13(7). -- Amended 1972 (1st Extra. Sess.) Ky. Acts ch. 3, sec. 67. -- Created 1966 Ky. Acts ch. 4, sec. 10.