

**350.445 Steep-slope strip mining -- Performance standards -- Conditions for disturbing land above highwall for road construction.**

The following performance standards shall be applicable to steep-slope strip mining and shall be in addition to those general performance standards required by KRS 350.405 to 350.435; provided, however, that the provisions of this section shall not apply to those situations in which a permittee or operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area, or where a permittee or operator is in compliance with the provisions of KRS 350.450(2):

- (1) The permittee or operator shall insure that when performing strip mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter not be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of KRS 350.410 or 350.445(2) shall be permanently stored pursuant to KRS 350.440.
- (2) The permittee or operator shall complete backfilling with spoil material and shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation.
- (3) The permittee or operator may not disturb land above the top of the highwall unless the cabinet finds that the disturbance will facilitate compliance with the environmental protection standards of this subsection; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate compliance. The land above the highwall may be disturbed for construction of a permanent road only where the applicant affirmatively demonstrates, and the cabinet makes a detailed and written determination, that the proposed disturbance facilitates compliance with this chapter and provided that the land disturbed shall be limited to that amount necessary to facilitate such compliance. The cabinet shall make this determination upon a demonstration by the permittee that:
  - (a) The permittee will completely eliminate the production highwall and backfill the mined areas to approximate original contour with no road remaining on the bench;
  - (b) The road will be placed on a solid base rather than on fill material and drainage will be diverted from the mining area;
  - (c) The road will comply with all applicable design criteria, including a drainage plan for avoiding seepage or uncontrolled discharge of water into the backfilled areas;
  - (d) The spoil calculations and spoil disposal plans include the road cut material and the extent, if any, that road cut material will be used to eliminate a production highwall;
  - (e) The road will connect to another road or roads and is necessary in order to support the approved postmining land uses;

- (f) Where practical and feasible, an undisturbed barrier will be left between the production highwall and the road itself. When an undisturbed barrier is not feasible, witness monuments will be left at a minimum of two (2) locations above the production highwall;
  - (g) The road will be constructed to a size and design appropriate to the proposed post-mining land use;
  - (h) The proposed mine plan and sequencing of the road construction in relation to the mining activity will minimize placement of spoil material into valley or hollow fills and will maximize permanent retention of mined spoil on the mine bench;
  - (i) There will be no coal removal from the construction of the permanent road except for incidental nonmerchantable coal that is disposed of in an approved manner; and
  - (j) All other performance standards of the chapter are met.
- (4) For the purposes of this section, the term "steep slope" is any slope above twenty (20) degrees or such lesser slope as may be defined by the cabinet, by regulation, after consideration of soil, climate, and other characteristics of the region.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 37, sec. 5, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 367, sec. 1, effective July 14, 2000. -- Amended 1992 Ky. Acts ch. 429, sec. 32, effective July 14, 1992. -- Created 1978 Ky. Acts ch. 330, sec. 10, effective May 3, 1978.