

**350.450 Prime farmland -- Mountaintop removal -- Variance upon written request of surface owner -- Technical assistance for small operator -- Release of portion of bond.**

- (1) If the area proposed to be mined contains prime farmland as defined in Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," then no permit shall be issued unless it complies with Section 510(d)(1) therein. Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface coal mining operations for which a permit was issued prior to August 3, 1977. Nothing herein shall be construed as authorizing the cabinet to promulgate regulations more stringent than those promulgated pursuant to PL 95-87 relating to prime farmland.
- (2) Where a surface coal mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, the operation shall comply with the requirements of paragraphs (c) and (d) of this subsection without regard to the requirements of KRS 350.410 or 350.445(2) and (3) with respect to lands from which overburden and the coal seam being mined have not been removed; provided, however, the cabinet shall establish internal procedures pursuant to which it shall permit surface coal mining operations for the purposes set forth in paragraph (b) of this subsection.
  - (a) Where an applicant meets the requirements of paragraphs (b) and (c) of this subsection a permit without regard to the requirements to restore to approximate original contour set forth in KRS 350.410 or 350.445(2) and (3) may be granted for the surface coal mining operations where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided in paragraph (c)1. of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting postmining uses in accord with the requirements of this subsection.
  - (b) In cases where an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the postmining use of the affected land, the cabinet may grant a permit for a surface coal mining operation of the nature described in paragraph (a) of this subsection where:
    1. After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed by the cabinet to constitute an equal or better economic or public use of the affected land as compared with premining use;
    2. The applicant presents specific plans for the proposed postmining land use and appropriate assurances that the land use will be:
      - a. Compatible with adjacent land uses;
      - b. Obtainable according to data regarding expected need and market;

- c. Assured of investment in necessary public facilities;
  - d. Supported by commitments from public agencies where appropriate;
  - e. Practicable with respect to private financial capability for completion of the proposed use;
  - f. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and
  - g. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;
- 3. The proposed use would be consistent with adjacent land uses and existing state and local land use plans;
  - 4. The cabinet provides the governing body of the unit of general-purpose government in which the land is located, and any state or federal agency which the cabinet in its discretion determines to have an interest in the proposed use, an opportunity of not more than thirty (30) days to review and comment on the proposed use; and
  - 5. All other requirements of this chapter will be met.
- (c) In granting any permit pursuant to this subsection the following requirements apply:
    - 1. The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;
    - 2. The reclaimed area is stable;
    - 3. The resulting plateau or rolling contour drains inward from the out slopes except at specified points;
    - 4. No damage will be done to natural watercourses;
    - 5. Spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of KRS 350.440; and
    - 6. Insure stability of the spoil retained on the mountaintop and meet the other requirements of this chapter.
  - (d) The regulatory authority shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection.
  - (e) All permits granted under the provisions of this subsection shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.
- (3) (a) The cabinet shall adopt procedures pursuant to which it may permit variances from the requirements of KRS 350.410 for the purposes set forth in paragraph (c) of this subsection, provided that the watershed

control of the area is improved, and further provided, complete backfilling with spoil material shall be required to cover completely the highwall, which material will maintain stability following mining and reclamation.

- (b) Where an applicant meets the requirements of paragraphs (c) and (d) of this subsection, a variance from the requirement to restore the approximate original contour set forth in KRS 350.410 and 350.445(2) may be granted for surface coal mining operations where the owner of the surface knowingly requests in writing, as a part of the permit application, that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.
  - (c) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land shall:
    - 1. Be deemed by the cabinet to constitute an equal or better economic or public use;
    - 2. Be designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and
    - 3. The watershed of the affected land be deemed by the cabinet to be improved.
  - (d) In granting a variance pursuant to paragraph (b) of this subsection, the cabinet shall require that only the amount of spoil will be placed off the mine bench that is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this chapter, and require all spoil placement off the mine bench to comply with KRS 350.440.
  - (e) The cabinet shall promulgate specific regulations as it deems necessary, if any, to govern the granting of variances in accord with the provisions of this subsection and may impose additional requirements it deems to be necessary.
  - (f) All exceptions granted under the provisions of this subsection shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.
- (4) The cabinet shall adopt programs, regulations, and procedures designed to provide technical assistance to assist the small coal operator with the permitting and environmental protection performance standards for surface coal mining operations within the Commonwealth. The programs shall be directed towards eliminating delays in the processing of permits by establishing a special administrative program to review small operator's permit applications and by establishing a procedure for providing the small operator the technical services of public and private agencies in addition to the services provided pursuant to KRS 350.465(2)(f) necessary for completing the permit application. Specifically, notwithstanding any other provision of this chapter or regulations adopted pursuant thereto, for the purpose of this program, the cabinet shall:

- (a) Develop a simplified small operator permit application. The cabinet shall notify all applicants of deficiencies in the form of the application by certified mail within ten (10) working days after the filing in the regional office. The applicant shall have ten (10) working days after the receipt of the notification to repair the deficiencies. Upon failure of the applicant to repair the deficiencies within ten (10) working days after receipt of the notification, the cabinet may return the application as incomplete.
- (b) Provide in the abandoned mine land program for small operators, having mined coal under a state permit or license at any time within the previous three (3) years, participation consisting at least of the following:
  - 1. That lands acquired or reclaimed by the state containing coal, coal refuse or other marketable minerals which should be removed in order to maximize the utilization, recoverability or conservation of solid fuel resources or to protect against adverse water quality impacts and which, once reclaimed, cannot be disturbed again by mining, shall be reclaimed by small operators unless the cabinet determines, after advertisement and advance opportunity to bid, that the reclamation project cannot be performed by the small operator bidders;
  - 2. That the cabinet shall establish procedures for maximizing participation by small operators in all reclamation projects including:
    - a. Designing and establishing project specifications and setting forth in the annual request for federal funding under the state reclamation plan not less than twenty percent (20%) of the projects on cost basis to be performed by small operators;
    - b. Advance advertising, soliciting, evaluating bids, and awarding contracts on all state reclamation projects for small operators.
  - 3. In the event no bids are submitted by small operators for small operator projects, the projects will be thereafter open for public bidding and no longer designated as small operator projects but shall satisfy that portion of the twenty percent (20%) set aside.
- (c) For the purposes of this subsection, a small coal operator is one who is anticipated to mine less than three hundred thousand (300,000) tons per year, and the cabinet in determining tonnage for qualification shall consider all production from common ownership of other corporations or operations.
- (d) Upon written notification by the small coal operator to the cabinet stating that no more mining will take place under a permit, the cabinet shall release a portion of the bond in accordance with KRS 350.070. In making its determinations pursuant to KRS 350.070 the cabinet shall:
  - 1. Determine the percentage of the permitted acreage in the area of reduction in relation to the initial acreage of the permit;
  - 2. Examine the land which has been disturbed and estimate the cost of reclamation;
  - 3. When the estimated cost of reclamation does not exceed ten thousand dollars (\$10,000) then the cabinet shall return all bond

money in excess of the ten thousand dollars (\$10,000);

4. When the estimated cost of reclamation exceeds ten thousand dollars (\$10,000), the cabinet shall retain the amount estimated and shall return all bond money in excess of the estimated amount but in no case shall the cabinet return more than the amount determined by multiplying the percentage determined under subparagraph 1. of this paragraph times the original total bond amount.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 119, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 390, sec. 1, effective April 11, 1984. -- Amended 1982 Ky. Acts ch. 283, sec. 7, effective April 2, 1982. -- Amended 1980 Ky. Acts ch. 62, sec. 33, effective March 21, 1980; and ch. 209, sec. 1, effective March 21, 1980. -- Amended 1979 (1st Extra. Sess.) Ky. Acts ch. 26, sec. 1, effective February 13, 1979. -- Created 1978 Ky. Acts ch. 330, sec. 11, effective May 3, 1978.