

### **350.465 Permanent regulatory program.**

- (1) The provisions of this section and regulations promulgated pursuant thereto, except with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone, and rock asphalt, shall apply to the regulation of all surface coal mining and reclamation operations in the Commonwealth in the event that the Commonwealth receives from the United States Department of Interior and pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, approval of a permanent state regulatory program, and the Commonwealth has promulgated regulations pursuant to this section.
- (2) The Energy and Environment Cabinet is hereby authorized and directed to prepare, develop and promulgate a comprehensive permanent regulatory program for the implementation of the Surface Mining Control and Reclamation Act of 1977, PL 95-87, for the purpose of accepting and administering primary enforcement responsibilities pursuant to that act. The implementation of this section shall contain procedures similar to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, and shall require surface coal mining operation performance standards no more stringent than provided for in that act. Nothing in this section shall be construed to empower the cabinet to adopt a regulatory program in conflict with the policy and purposes of the Surface Mining Control and Reclamation Act of 1977, PL 95-87. To that end, the Energy and Environment Cabinet shall include in its permanent regulatory program:
  - (a) Environmental protection performance standards to prevent or minimize the adverse environmental effects of surface coal mining and reclamation operations on the land and water resources of the Commonwealth;
  - (b) A procedure for designating as being unsuitable for mining certain lands because of their topographical, geological, hydrological, climatological, biological, or chemical characteristics or historical, cultural, scientific, or aesthetic values;
  - (c) Procedures and regulations for the allowance of those persons having an interest which is or may be adversely affected to have the opportunity to be heard at every significant or critical part of the administrative and judicial process, including, but not limited to, the permit review and issuance process, the general enforcement process and hearings incident thereto, and the rulemaking procedures conducted by the cabinet; and procedures and regulations for persons having a valid legal interest which is or may be adversely affected by the setting, release, and inspection of bonds to have an opportunity to be heard at every significant or critical part of the administrative and judicial process relating to bonds. The regulations shall provide reasonable procedures for notice and an opportunity to be heard, access to minesites, access to records, and other reasonable procedures to accomplish the purposes of this chapter;
  - (d) Procedures for the administrative and judicial review of all actions of the cabinet to administer and enforce the provisions of this chapter, including the award of costs and expenses, including attorney's fees and expert witness fees, by the cabinet or the court;
  - (e) Plans and procedures for the reclamation and restoration of land and

water resources affected by mining which have been abandoned or inadequately reclaimed to the standards imposed by this section and for which no bond is held or legal obligation to reclaim continues. The plan shall include provisions for the imposition of liens for necessary reclamation expenditures made on private property; and

- (f) Procedures for the assumption of the small operator assistance program pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87. The cabinet shall assume and implement that program and apply for and administer funds as may be provided pursuant to that act and such state funds as may be provided for the program.
- (3) In addition to any other authority, power, and duty vested in it by law, the cabinet shall have and exercise broad authority, power, and duty to:
- (a) Require those persons who wish to engage in surface coal mining and reclamation operations to submit application for a permit from the cabinet to conduct the operations, and to include in that application all information required by the cabinet pertaining to that operation;
  - (b) Issue, deny, or modify under such conditions as the cabinet may prescribe, permits to conduct surface coal mining and reclamation operations within the Commonwealth;
  - (c) Enter and inspect any permitted surface coal mining and reclamation operation or any known or suspected unpermitted mining operation for the purpose of ascertaining compliance with any provision of this chapter or of the permit;
  - (d) Order the cessation of mining activities, and if necessary impose affirmative abatement obligations, upon the permittee, operator, or person when, upon inspection, the cabinet determines that this section or any permit condition is being or has been violated so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth;
  - (e) Order a person, permittee, or an operator to comply with the requirements of this section or his permit if inspection reveals a violation of the conditions of his permit or of any provision of this section;
  - (f) Order a permittee to appear and show cause why his permit should not be suspended or revoked and his bond forfeited if the cabinet determines that the permittee or operator or the permitted operation has a pattern of violations of this section or permit conditions, and has willfully violated this section or permit conditions or a pattern of violations exists and that the violations are caused by the operator's or permittee's unwarranted failure to comply with this section or permit conditions;
  - (g) Require, increase, release, or decrease, under such conditions as the cabinet may prescribe, reclamation performance bonds and cause the forfeiture and collection of those bonds where the permittee has abandoned the operation or for which the permit under which the bond was given has been revoked or has expired without the required reclamation;
  - (h) To administratively impose, in lieu of those civil penalties provided for in KRS 350.990, civil penalties of up to five thousand dollars (\$5,000) per

day for violations of permit conditions, this section, or any orders of the cabinet and enforce the administrative assessment of the penalties by initiating civil action in the Franklin Circuit Court or in any court having jurisdiction of the defendant;

- (i) Conduct hearings and make investigations of any matter relating to the regulation of surface coal mining and reclamation operations, and provide for the assessment and payment of civil penalties including the placement of proposed civil penalty assessments into an escrow account prior to a contest on the amount of the assessment, consistent with the process of law;
  - (j) Provide for variances or exceptions consistent with KRS 350.450 from or in addition to mining performance standards, recognizing the specific characteristics inherent in:
    - 1. Steep slope mining;
    - 2. Mountaintop removal;
    - 3. Relatively low acreage disturbance or annual coal production;
    - 4. Prime farmland mining as defined by the United States Department of Agriculture, and to provide for other variances where land uses and watersheds will be improved; and
    - 5. Postmining uses different from and as beneficial as the premining uses;
  - (k) Receive and expend funds or aid from whatever source to accomplish the purposes of this chapter; and
  - (l) Propose and promulgate regulations to accomplish the purposes of this section.
- (4) The cabinet shall not promulgate regulations which are inconsistent with the Surface Mining Control and Reclamation Act of 1977, PL 95-87.
- (5) Any person who violates a provision of this section or the regulations promulgated pursuant thereto shall be subject to those penalties and remedies set forth in KRS 350.990 except as provided for in subsection (3)(h) of this section.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1889, effective July 15, 2010. -- Amended 1992 Ky. Acts ch. 429, sec. 34, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 62, sec. 34. -- Created 1978 Ky. Acts ch. 330, sec. 28, effective June 1, 1979.