

### **350.610 Designation of lands as unsuitable for surface coal mining.**

- (1) The secretary of the Energy and Environment Cabinet is hereby authorized to establish a planning process enabling objective decisions based upon competent and scientifically sound data as to which, if any, lands of the Commonwealth are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in this chapter; provided, that any such designation shall not prevent coal or other mineral exploration of any area so designated.
- (2) Upon petition and hearing pursuant to subsection (6) of this section, the secretary shall designate an area as unsuitable for all or certain types of surface coal mining operations, if the secretary determines that reclamation pursuant to this chapter is not technologically and economically feasible.
- (3) Upon petition and hearing pursuant to subsection (6) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:
  - (a) Be incompatible with existing state and local land use plans; or
  - (b) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values, and natural systems; or
  - (c) Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, and such lands to include aquifers and aquifer recharge areas; or
  - (d) Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.
- (4) Determinations of the unsuitability of land for surface coal mining shall be integrated as closely as possible with present and future land use planning and regulation processes at any appropriate level of government, including but not limited to any valid exercise of authority of a municipality or county, acting independently or jointly, pursuant to KRS Chapter 100.
- (5) The requirements of this section shall not apply to lands on which coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this chapter or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.
- (6) Other provisions of this chapter relating to hearings to the contrary notwithstanding, any person having an interest which is or may be adversely affected shall have the right to petition the cabinet to the extent such a petition would be consistent with subsections (2) and (3) of this section, to have a specific and well-defined area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts which shall be specific as to the petitioner's designated area, including a justification that the criteria alleged occur throughout and form a significant feature, and shall be based upon objective evidence which would tend to establish the allegations. The cabinet

shall make a determination or finding whether the petition is complete, incomplete, or frivolous. Within ten (10) months after the receipt of the petition, the cabinet shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing, pursuant to regulations promulgated by the cabinet to implement this section, provided that when a permit application is pending before the cabinet and such application involves an area in a designation petition, the cabinet shall hold the hearing on the petition within ninety (90) days of its receipt. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after such a hearing, the cabinet shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held. Within thirty (30) days after receipt of an order, determination, finding, or decision by the cabinet or the secretary hereunder, any applicant, or any person with an interest which is or may be adversely affected and who is aggrieved by the order, determination, finding, or decision of the cabinet or secretary, may obtain judicial review thereof by appealing to the Circuit Court of Franklin County pursuant to the provisions of KRS 224.10-470.

- (7) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement on:
  - (a) The potential coal resources of the area;
  - (b) The demand for coal resources;
  - (c) The impact of such designation on the environment, the economy, and the supply of coal; and
  - (d) The characteristics of the petition area including a justification that the criteria alleged occur throughout the petition area and form a significant feature.
- (8) Subject to subsection (5) of this section, the cabinet shall not issue a permit to conduct surface coal mining and reclamation operations in contravention of any designation or any decision on any petition pursuant to subsection (6) of this section regarding any surface area designated unsuitable for mining; nor shall the cabinet issue a permit to conduct surface coal mining and reclamation operations in an area under study for such designation in an administrative proceeding already commenced under subsection (6) of this section.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1895, effective July 15, 2010. -- Amended 1984 Ky. Acts ch. 180, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 283, sec. 8, effective April 2, 1982. -- Created 1980 Ky. Acts ch. 62, sec. 36, effective March 21, 1980.

**Legislative Research Commission Note** (7/11/91). A technical correction has been made in this section by the Reviser of Statutes pursuant to KRS 7.136 and 7.140.