

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Reclamation and Enforcement

4 (Amendment)

5 405 KAR 18:140. Disposal of coal mine [processing] waste.

6 RELATES TO: KRS 350.151, 350.410, 350.420, 350.465, EO 2009-0538

7 STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [~~in-pertinent-part~~]

9 requires the cabinet to promulgate [~~rules-and~~] administrative regulations establishing performance
10 standards for protection of people and property, land, water and other natural resources, and
11 aesthetic values, during underground mining activities and for restoration and reclamation of
12 surface areas affected by underground mining activities. EO 2009 - 0538, effective June 12, 2009,
13 abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and
14 Environment Cabinet. This administrative regulation establishes [~~sets-forth~~] requirements for the
15 disposal of coal mine [~~processing~~] waste, including design and construction requirements for coal
16 mine [~~processing~~] waste banks, site inspection requirements, water control measures, provisions
17 for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal
18 mine [~~processing~~] waste to underground mine workings.

19 Section 1. General Requirements. (1) All coal mine [~~processing~~] waste shall be hailed and
20 conveyed in a controlled [~~transported-and-placed-in-a~~] manner approved by the cabinet in disposal

1 areas approved by the cabinet for this purpose. These areas shall be within a permit area. The
2 disposal area shall be designed, constructed, and maintained:

3 (a) In accordance with this administrative regulation and the criteria established [~~sets forth~~]
4 in 405 KAR 18:130, Sections 1 and 2; and

5 (b) To prevent combustion.

6 (2) Coal mine [~~processing~~] waste materials from activities located outside the permit area,
7 such as those activities at other mines or abandoned mine waste banks, may be disposed of in the
8 permit area only if approved by the cabinet. Approval shall be based on a showing by the
9 permittee, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal
10 of these materials does not:

11 (a) Adversely affect water quality, water flow, or vegetation;

12 (b) Create public health hazards; or

13 (c) Cause instability in the disposal areas.

14 Section 2. Site Inspection. (1) All coal mine [~~processing~~] waste banks shall be inspected on
15 behalf of the permittee by a qualified [~~registered~~] professional engineer or other qualified person
16 under the direct supervision of the responsible [~~registered~~] professional engineer.

17 (a) Inspections shall occur at least quarterly, beginning within seven (7) days after
18 preparation of the disposal area begins. The cabinet may require more frequent inspections based
19 upon an evaluation of the potential danger to the health or safety of the public and the potential
20 harm to land, air and water resources. Inspections may terminate when the coal mine [~~processing~~]
21 waste bank has been graded, covered in accordance with Section 4 of this administrative
22 regulation, topsoil has been distributed on the bank in accordance with 405 KAR 18:050, Section
23 4, or at such a later time as the cabinet may require.

1 (b) Inspections shall include [such] observations and tests as may be necessary to evaluate
2 the potential hazard to human life and property, ensure that all organic material and topsoil have
3 been removed and that proper construction and maintenance are occurring in accordance with the
4 plan submitted under 405 KAR 8:040, Section 34, and approved by the cabinet.

5 (c) The engineer shall consider steepness of slopes, seepage, and other visible factors which
6 could indicate potential failure, and the results of failure with respect to the threat to human life and
7 property.

8 (d) The responsible registered professional engineer shall certify to the cabinet within two
9 (2) weeks after each inspection that the coal mine [processing] waste bank has been constructed as
10 specified in the design approved by the cabinet. Copies of the inspection findings shall be
11 maintained at the mine site.

12 (2) If an [any] inspection discloses that a potential hazard exists, the cabinet shall be
13 informed promptly of the finding and of the emergency procedures formulated for public
14 protection and remedial action.

15 (a) If adequate procedures cannot be formulated or implemented, the cabinet shall be
16 notified immediately.

17 (b) The cabinet shall then notify the appropriate emergency agencies that other emergency
18 procedures are required to protect the public from the coal mine [processing] waste area.

19 Section 3. Water Control Measures. (1) Except where the cabinet approves alternative
20 practices that [which] ensure structural integrity of the waste bank and protection of ground and
21 surface water quality, a properly designed subdrainage system shall be provided, which shall:

22 (a) Intercept all ground water sources;

23 (b) Be protected by an adequate filter; and

1 (c) Be covered so as to protect against the entrance of surface water or leachate from the
2 coal mine [p~~r~~o~~e~~essing] waste.

3 (2) During and after construction, [a~~ll~~] surface drainage from the area above the coal mine
4 [p~~r~~o~~e~~essing] waste bank and from the crest and face of the waste disposal area shall be diverted, in
5 accordance with 405 KAR 18:130, Section 2(4).

6 (3) Slope protection shall be provided to minimize surface erosion at the site. Disturbed
7 [~~All-disturbed~~] areas, including diversion ditches that are not riprapped, shall be vegetated upon
8 completion of construction.

9 (4) Discharges of [a~~ll~~] waters from a coal mine [p~~r~~o~~e~~essing] waste bank shall comply with
10 405 KAR 18:060, Sections 1, 2, and 7; 405 KAR 18:070; 405 KAR 18:090; and 405 KAR 18:110.

11 Section 4. Construction Requirements. (1) Coal mine [p~~r~~o~~e~~essing] waste banks shall be
12 constructed in compliance with 405 KAR 18:130, Sections 1 and 2, except to the extent that the
13 requirements of those sections are specifically varied in this section:

14 (2) Coal mine [p~~r~~o~~e~~essing] waste banks shall have a minimum static factor of safety of one
15 and five-tenths (1.5).

16 (3) Compaction requirements during construction or modification of [a~~ll~~] coal mine
17 [p~~r~~o~~e~~essing] waste banks shall meet the requirements of this subsection, instead of those specified
18 in 405 KAR 18:130, Section 2(3).

19 (a) The coal mine [p~~r~~o~~e~~essing] waste shall be:

20 1. [~~(a)~~] Spread in horizontal layers not [~~no~~] more than twenty-four (24) inches in thickness;
21 and

22 2. [~~(b)~~] Compacted to attain ninety (90) percent of the maximum dry density in order to
23 prevent spontaneous combustion and to provide the strength required for stability of the coal mine

1 [p~~r~~o~~e~~essing] waste bank. Dry densities shall be determined in accordance with the American
2 Association of State Highway and Transportation Officials (AASHTO) Specification T99-74 (12th
3 Edition) (July 1978) or an equivalent method.

4 (b) [(e)] Variations may be allowed in these requirements for the disposal of dewatered fine
5 coal waste (minus twenty-eight (28) sieve size) with approval of the cabinet.

6 (4)(a) Following grading of the coal mine [p~~r~~o~~e~~essing] waste bank, the site shall be covered
7 with a minimum of four (4) feet of the best available nontoxic and noncombustible material, in
8 accordance with 405 KAR 18:050, Section 2(5), and in a manner that does not impede flow from
9 subdrainage systems.

10 (b) The coal mine [p~~r~~o~~e~~essing] waste bank shall be revegetated in accordance with 405
11 KAR 18:200.

12 (c) The cabinet may allow less than four (4) feet of cover material based on physical and
13 chemical analyses that [~~which~~] show that the requirements of 405 KAR 18:200 shall [~~will~~] be met.

14 Section 5. Burning Coal Waste. Coal mine [p~~r~~o~~e~~essing] waste fires shall be extinguished by
15 the permittee, in accordance with a plan approved by the cabinet and the MSHA. The plan shall
16 contain, as a minimum, provisions to ensure that only [~~these~~] persons authorized by the permittee,
17 and who have an understanding of the procedures to be used, shall be involved in the extinguishing
18 operations.

19 Section 6. Burned Waste Utilization. (1) Before any burned coal mine waste, [p~~r~~o~~e~~essing
20 ~~waste-or~~] other materials, or refuse is removed from a disposal area, approval shall be obtained
21 from the cabinet.

1 (2) A plan for the method of removal, with maps and appropriate drawings to illustrate the
2 proposed sequence of the operation and methods of compliance with this chapter shall be
3 submitted to the cabinet.

4 (3) Consideration shall be given in the plan to potential hazards that [~~which~~] may be
5 created by removal to persons working or living in the vicinity of the disposal area.

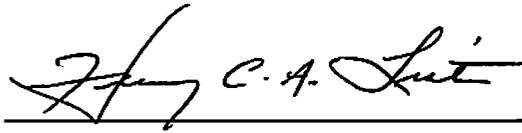
6 (4) The plan shall be prepared by a qualified [~~registered~~] professional engineer.

7 Section 7. Return to Underground Workings. Coal mine [~~processing~~] waste may be
8 returned to underground mine workings only in accordance with the waste disposal program
9 approved by the cabinet and MSHA pursuant to [~~under~~] 405 KAR 8:040, Sections 27 and 28.

405 KAR 18:140 approved for filing.
Pages (1-6)

7/29/09

Date



Henry C. A. List, Deputy Secretary
Signing for
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2009 at 1:00 P.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 30, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jim Dickinson, Director
Division of Mine Reclamation and Enforcement
#2 Hudson Hollow
Frankfort, KY 40601
Telephone: (502) 564-2340 Fax (502) 564-5848
Email: Jim.Dickinson@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 18:140

Contact Person: Jim Dickinson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements for the disposal of coal mine waste, including design and construction requirements for coal mine waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal mine waste to underground mine workings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on the disposal of coal mine wastes as it relates to underground mining.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 requires the cabinet to promulgate administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation conforms to the authorizing statutes by detailing the requirements for coal mining waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation details the requirements for the disposal of coal mine wastes resulting from underground mining activities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the wording of “coal processing waste” to “coal mine waste” in order to more closely match federal regulations and clarify the differences between the terms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to settle interpretational differences between the Department for Natural Resources and the federal Office of Surface Mining, Reclamation, and Enforcement.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 requires the cabinet to promulgate administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This

amendment will more closely comply with the federal requirements and aid the cabinet in administering and enforcing the initial and permanent regulatory programs of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977" as required by KRS 350.028.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will settle interpretational differences between the Department for Natural Resources and the federal Office of Surface Mining, Reclamation, and Enforcement, which will clarify the issue for the regulated public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all underground coal mining companies throughout the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no impact to the regulated industry. The regulations will be amended to simply reflect the federal regulations. There will be no change in procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs associated with this amendment. There will be no change in current procedures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will benefit in the clarity provided by state requirements matching federal regulatory requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional costs associated with the implementation of this amendment.

(b) On a continuing basis: There will be no continuing costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars will be used to fund this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase funding to implement the amendments in this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not create or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

No. All coal operators will be treated in the same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Admin. Regulation No. 405 KAR 18:140 Contact Person: Jim Dickinson, Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 350 requires the cabinet to promulgate administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not significantly affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by these amendments.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this proposed amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this proposed amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation # 805 KAR 18:140

Agency Contact: Jim Dickinson, Director

- 1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. 817.81.**
- 2. State Compliance Standards. KRS 350.028, 350.151, 350.465.**
- 3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 817.81.**
- 4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. This amendment will closely mirror the federal language contained within 30 CFR 817.81**
- 5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA.**