

PERMIT REQUIREMENTS FOR DEVELOPMENT OF ENERGY
AND OTHER SELECTED NATURAL RESOURCES FOR THE
STATE OF KENTUCKY

PREPARED FOR
THE STATE OF KENTUCKY
AND THE
U.S. GEOLOGICAL SURVEY

INDIANA UNIVERSITY, ENVIRONMENTAL SYSTEMS APPLICATION CENTER

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Capitol Plaza Tower
Frankfort, Kentucky 40601

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STATE PERMIT REQUIREMENTS FOR DEVELOPMENT OF
ENERGY AND OTHER SELECTED NATURAL RESOURCES

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SECTION I.
INTRODUCTION

INTRODUCTION TO GUIDE

This guidebook is one of a series prepared for every State. The purpose of the guidebook is to summarize State regulations and permit requirements for natural resources management and development. The guidebook is intended not only for private developers and interest groups, but also for regulatory officials of Federal, State and local government as well.

All State agencies having jurisdiction over the permits, licenses, and approvals described in this guidebook helped to prepare it, and they reviewed the final draft of each summary for accuracy and completeness. Users of this guidebook should be aware, however, that changes in the laws, rules and regulations, or regulatory personnel since the guidebook was published may cause significant changes in permit requirements.

The guidebook should not be construed as a legal document or a final authority on permits for the Commonwealth of Kentucky. It is not intended to be a comprehensive reference to the specific requirements of each permit, but to provide concise, easy-to-use information on the State regulations that govern the development of such resources. Before attempting to obtain a permit or begin any activity that might require a permit, you should contact the appropriate State agency for further details.

The guidebook is divided into seven sections. Sections I, II, and VII discuss introductory information, consolidated permit programs, and local regulatory policies, respectively. The remaining sections discuss permits that apply to resource extraction, land use regulation, environmental quality management, and social/ecological preservation. Each section is divided into chapters; each chapter summarizes one permit, license, or approval. Permits administered by a single agency are generally grouped together in each section.

Each permit is discussed in the standard format shown below:

PRESENTATION FORMAT

CHAPTER TITLE

A. AUTHORIZING STATUTE

Title of the statute, including its legal citation, which establishes the basis for regulation.

B. TITLE OF REGULATION

Title of the regulation(s) adopted to implement the statute.

C. SUMMARY OF REGULATION

Summary of the regulation or summary of the procedure for obtaining a permit, lease, license, etc. In general, information is presented according to the following format:

1. APPLICABILITY

Generally describes activities controlled by the regulation.

2. GENERAL REQUIREMENTS

Describes regulatory requirements which must be met by all activities covered.

3. SUBMISSION REQUIREMENTS

Briefly describes types of information which must be submitted to obtain approval of the proposed activity.

4. PROCEDURE FOR OBTAINING A PERMIT, LEASE, ETC.

Outlines procedures and time requirements which must be met by the applicant and (or) the agency, such as application submittal, public notification, public hearing, application review, preliminary and final decisions. Total processing time is also provided.

5. OPERATION REQUIREMENTS

Describes operation requirements that must be met by the operator to comply with regulatory requirements and continue operation.

6. FEES

Indicates administrative fees, if any, which are charged by the administering agency.

D. ADMINISTERING AGENCY

Provides the name, address, and telephone number of the agency responsible for administering the regulations or statutes.

The information in each chapter varies according to the type of control summarized (e.g., a statute, a regulation, a review process, a standard, etc.)

SECTION II.
STATE POLICY AND
PROCEDURES

CHAPTER 1

STATE CLEARINGHOUSE OR ONE-STOP PERMIT AGENCY

A. SUMMARY OF PROCEDURE

The Kentucky Department for Natural Resources and Environmental Protection (hereafter Department) has tentative plans to develop and implement a "one-stop permitting process" to assist applicants in obtaining necessary state-level environmental permits and to improve intradepartmental coordination of the Department's permitting processes for projects requiring multiple permits. Implementation of these plans will create a "one-stop permit coordination office" in the Secretary's Office to: (1) act as central contact for applicants to obtain permit application information, (2) identify, based on information supplied by the applicant, all Department permit requirements, (3) coordinate pre-application conferences as requested by the applicant, (4) track permit application process milestones with a computerized system, and (5) provide intradepartmental coordination during the permit application process and respond to process delays. This procedure will not eliminate or modify any requirement set out by Kentucky statutes and (or) regulations, but does, at the initial stages of project planning, identify all required State permits, approvals, etc., for every project, based on its specific characteristics and the corresponding potential for certain environmental impacts.

Implementation of this planned "one-stop permitting process" for environmental permits is awaiting approval of funding and staffing requests. In the interim, a pilot permit-application tracking system has been implemented to track permit applications for energy-related facilities, such as coal conversion, power generation, coal preparation, oil shale processing, and ethanol and other facilities, and to provide a limited degree of intradepartmental coordination of the permitting processes for these high-priority facilities.

This service can be obtained at any of the Department's offices or by contacting:

B. ADMINISTERING AGENCY

Office of Special Projects

Department for Natural Resources

and Environmental Protection

Capital Plaza Tower, Fourth Floor

Frankfort, Kentucky 40601

(502) 564-7320

CHAPTER 2

STATE ENVIRONMENTAL POLICY STATUTES

Although Kentucky law does not contain an environmental impact statement requirement, there is a process which all proposed electrical-generation facilities must participate in prior to construction. This process includes the submission of an environmental impact statement pursuant to the National Environment Policy Act (NEPA) and is detailed in chapter 6, Major Facility Siting.

SECTION III.
RESOURCE EXTRACTION

CHAPTER 3

ENERGY RESOURCES

I. COAL MINING

INTRODUCTION

This chapter outlines the Kentucky Administrative Regulations for coal mining (both underground and surface). The coal mining regulations presently being enforced by the Kentucky Department for Natural Resources and Environmental Protection's (hereafter Department) Bureau of Surface Mining Reclamation and Enforcement (hereafter Bureau) are interim regulations promulgated with respect to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87). These currently enforced interim regulations will be changed in the near future.

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 28 - Mines and Minerals, Chapter 350 - Surface Coal Mining.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 405 - Department for Natural Resources and Environmental Protection, Bureau of Surface Mining Reclamation and Enforcement.

C. SUMMARY OF REGULATIONS

1. REGULATION 1 - SURFACE MINING OF COAL

a. APPLICABILITY

These regulations apply to all strip mining of coal on or after May 3, 1978 on land from which coal has not been removed; and to any other land used or disturbed in connection with the strip mining of coal, except:

- 1) extraction of coal by a land owner for his own non-commercial use;
- 2) extraction of coal as an incidental part of publicly financed construction;
- 3) extraction from an operation which removes 250 tons or less within 12 consecutive months; or
- 4) extraction of coal incidental to the extraction of other minerals, in which the coal amounts to less than $16 \frac{2}{3}$ percent of total commercial mineral tonnage.

b. GENERAL REQUIREMENTS

All persons or operators who engage in surface mining must have a license from the Department. In addition, all persons or operators who engage in the strip mining of coal must have a current, valid permit from the Department covering the area of land to be affected by the operation, and must adhere to the specific requirements set out in their permit(s).

c. SUBMISSION REQUIREMENTS

The information required for a permit differs depending upon whether the operation affects 2 acres or less; or whether the operation affects more than 2 acres. Types of information required include, but are not limited to:

- 1) U.S. Geological Survey topographic maps identifying coal seams, access roads, haul roads, spoil disposal areas, sedimentation ponds, etc.;
- 2) methods and schedules of backfilling, grading, and reclamation of affected area(s);
- 3) owner and operator information; and
- 4) any other information the Department requests.

d. PROCEDURE FOR OBTAINING A PERMIT

1) TIME REQUIREMENTS

The Department will have 30 days from the date of receipt of a completed application to:

- a) issue the permit;
- b) notify the applicant of any deficiencies within the application and allow temporary withdrawal for corrections; or
- c) deny the application (written reasons attached).

2) PUBLIC NOTIFICATION, HEARING

Public notification by operator through local newspaper not less than 10 nor more than 30 days prior to the filing of the permit application with the Department is required. Any applicant who disagrees with the decision of the Department may request a hearing. The Department will notify the applicant of its final order within 20 days of such hearing. Any person aggrieved of this final order of the Department may appeal to the courts.

e. OPERATION REQUIREMENTS

Annual reports by the operators are required. These reports shall disclose mining and reclamation activities including:

- 1) updated data on land mined, backfilled, re-graded, planted, and seeded;
- 2) status of sedimentation ponds;
- 3) water quality reports; and
- 4) any additional information requested by the Department.

f. FEES AND BONDS

Application fee: \$250 and an additional \$50 for each acre or fraction thereof to be affected by the permit(s).

Bond(s): not less than \$500 nor more than \$3000 for each acre or fraction thereof, with a minimum bond of \$5,000. The operator's bond will be determined by the Department on the recommendation of the Secretary.

2. REGULATION 2 - UNDERGROUND MINING OF COAL

a. APPLICABILITY

These regulations apply to all surface operations for the underground mining of coal and all surface effects of underground coal mining on or after May 3, 1978; and to any other lands used, disturbed, or redisturbed in connection with the underground mining of coal except:

- 1) extraction of coal by a land owner for his own non-commercial use;
- 2) extraction of coal as an incidental part of publicly financed construction;
- 3) extraction from an operation which removes 250 tons or less within 12 consecutive months; or
- 4) extraction of coal incidental to the extraction of other minerals, in which the coal amounts to less than $16 \frac{2}{3}$ percent of total commercial mineral tonnage.

b. GENERAL REQUIREMENTS

All persons or operators who engage in underground mining must have a license from the Kentucky Department of Mines and Minerals. In addition, all persons or operators who engage in the underground mining of coal must have a current, valid permit from

the Department covering the area of land to be affected by the operation, and must adhere to the specific requirements set out in their permit(s).

c. SUBMISSION REQUIREMENTS

The information required for a permit differs depending upon whether the operation affects 2 acres or less, or whether the operation affects more than 2 acres. Types of information required include, but are not limited to:

- 1) U.S. Geological Survey topographic maps identifying coal seams, access roads, spoil disposal areas, sedimentation ponds, etc.;
- 2) methods and schedules of backfilling, grading, and reclamation of affected area(s);
- 3) owner and operator information; and
- 4) any other information the Department requests.

d. PROCEDURE FOR OBTAINING A PERMIT

1) TIME REQUIREMENTS

The Department will have 30 days from the date of receipt of a completed application to:

- a) issue the permit;
- b) notify the applicant of any deficiencies within the application and allow temporary withdrawal for corrections; or
- c) deny the application (written reasons attached).

2) PUBLIC NOTIFICATION, HEARING

Public notification by operator through local newspaper not less than 10 nor more than 30 days prior to the filing of the permit application with the Department is required. Any applicant who disagrees with the decision of the Department may request a hearing. The Department will

notify applicant of its final order within 20 days of such hearing. Any person aggrieved of this final order of the Department may appeal to the courts.

e. OPERATION REQUIREMENTS

Annual reports by the operators are required. These reports shall disclose mining and reclamation activities including:

- 1) updated data on land mined, backfilled, re-graded, planted and seeded;
- 2) status of sedimentation ponds;
- 3) water quality reports; and
- 4) any additional information requested by the Department.

f. FEES AND BONDS

Application fee is \$250 and an additional \$50 for each acre or fraction thereof to be affected by the permit(s). The bond(s) will not be less than \$500 nor more than \$3,000 for each acre or fraction thereof with a minimum bond of \$5,000. The operator's bond will be determined by the Department on the recommendation of the Secretary.

D. ADMINISTERING AGENCY

Bureau of Surface Mining Reclamation and Enforcement
Department for Natural Resources and Environmental Protection
Capital Plaza Tower, 6th Floor
Frankfort, KY 40601
(502) 564-6940

II. WELL DRILLING

INTRODUCTION

This part of the Chapter outlines the Kentucky Administrative Regulations that control the pre-drilling, drilling, operating, and eventual plugging of oil and gas wells in the State of Kentucky. These regulations designate the Kentucky Department of Mines and Minerals (hereafter Department) Division of Oil and Gas (hereafter Division) as having jurisdiction over the permitting, bonding, and enforcement procedures involved with the exploration and recovery of oil and gas in the Commonwealth of Kentucky.

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 28 - Mines and Minerals, Chapter 353 - Oil, Gas and Salt Water Wells.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 805, Chapter 1 - Division of Oil and Gas.

C. SUMMARY OF REGULATION

1. APPLICABILITY

This regulation applies to any well drilled in the Commonwealth of Kentucky subject to the jurisdiction of the Department of Mines and Minerals subsequent to the effective date of the regulation (August 2, 1978).

2. GENERAL REQUIREMENTS

No person(s) can drill a well in the Commonwealth of Kentucky without a permit to drill, deepen, re-open, or produce a well. Likewise, no person(s) can operate a well without a use permit from the Division of Oil and Gas.

3. SUBMISSION REQUIREMENTS

The information required for the permit application includes:

- a. a location plat prepared and certified as accurate and correct by a licensed Kentucky land surveyor to identify the well locations;
- b. information about the well operator;
- c. approximate depth of deepest freshwater zone;
- d. geological information of area(s) affected;
- e. bonding information; and
- f. any other information the Division requires.

4. PROCEDURE FOR OBTAINING A PERMIT

An operator need only complete and submit the Department's application form as required with the appropriate fees. The Department will usually process the application within 3 to 8 days (there is no time limitation set by statute or regulation). There is no requirement for public notification, public comment, or public hearing in the regulation.

5. OPERATION REQUIREMENTS

Department requirements for the drilling and production phases of oil and gas exploration include:

- a. well casings extending at least 30 feet below the deepest known freshwater zone;
- b. cementing of casings where pressures are abnormal;
- c. specific requirements when fluids are injected into the wells; and
- d. detailed requirements when a well is to be plugged.

The Division gets monthly totals, by county, of oil (in barrels) from the Kentucky Department of Revenue.

6. FEES AND BONDS

Application fee: \$25 for permits.

Bonds: \$1,000 for individual wells. This sum is to insure that the well is properly capped upon the end of its usefulness. Bonds shall be released upon proper plugging and filing of a plugging affidavit with the Department.

D. ADMINISTERING AGENCY

Division of Oil and Gas
Department of Mines and Minerals
P.O. Box 680
Lexington, KY 40586
(606) 254-0367 (Ext. 39)

CHAPTER 4

METALLIFEROUS MINING

There are no Kentucky laws or regulations which specifically regulate metalliferous mining within the Commonwealth of Kentucky.

CHAPTER 5

CONSTRUCTION MATERIALS

INTRODUCTION

This chapter outlines the Kentucky Administrative Regulations that control the mining and reclamation of construction materials. The regulations delegate these jurisdictional powers to the Kentucky Department for Natural Resources and Environmental Protection's (hereafter Department) Bureau of Surface Mining Reclamation and Enforcement (hereafter Bureau).

A. AUTHORIZING STATUTE

Kentucky Revised Statute (KRS) Title 28 - Mines and Minerals, Chapter 350 - Surface Coal Mining.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 405, Chapter 5 - Surface Effects of Non-Coal Mining. Department for Natural Resources and Environmental Protection, Bureau of Surface Mining Reclamation and Enforcement.

C. SUMMARY OF REGULATION

1. APPLICABILITY

These regulations apply to all clay, fluorspar, sand and gravel (exclusive of river sand and gravel), stone and rock asphalt mines, pits, or quarries, that are mined by the surface mining process within the Commonwealth of Kentucky.

2. GENERAL REQUIREMENTS

All persons and operators who engage in surface mining of any type must have a license from the Kentucky Department of Mines and Minerals. In addition, all persons and operators who engage in surface non-coal mining must obtain a permit from the Department covering the area(s) of land

to be affected by the mining. They must also adhere to the specific requirements set out in their permit(s).

3. SUBMISSION REQUIREMENTS

The information necessary before the Department's Division of Reclamation (hereafter Division) will issue a permit for applicable non-coal surface mining activities includes, but is not limited to:

- a. maps identifying areas to be disturbed;
- b. reclamation methods and schedules; and
- c. other information requested by the Division.

4. PROCEDURE FOR OBTAINING A PERMIT

a. TIME REQUIREMENTS

Upon submission of a completed permit application the Division shall notify the applicant within 20 work days as to their decision to:

- 1) issue a permit (for periods up to 5 years); or
- 2) deny the permit application (this denial will be accompanied by reasons for the denial and may include proposed modifications from the Division to aid in future approval).

b. PUBLIC NOTIFICATION, HEARING

Should the applicant disagree with the decision of the Division he may, by written notice, request a hearing conducted by the Department. The Division shall notify the applicant within 20 days after the hearing by the Department as to its final decision.

5. OPERATION REQUIREMENTS

a. CLAY MINING

- 1) When mining produces a bench, or when mining on the contour, grading must be kept current with the operation, which means within 90 days following the clay removal.

- 2) Quarry methods require:
 - a) encouragement of properly constructed water impoundments;
 - b) removal and stabilization of spoil or over-burden to minimize surface disturbance;
 - c) proper burying of acid or toxic materials to prevent stream or soil pollution; and
 - d) general mining practices to protect the public and adjoining landowners.

b. FLUORSPAR, SAND AND GRAVEL, STONE, AND ROCK ASPHALT
For surface mining of these materials (exclusive of river sand and gravel), the operator must comply with the following requirements:

- 1) stabilization of spoil and overburden;
- 2) construction of water impoundments;
- 3) proper revegetation of affected area; and
- 4) other requirements controlling operator action including the eventual abandonment of buildings and other structures, dictated by the Department.

6. FEES AND BONDS

FEES

Clay mining: \$100 for a license which is issued for one year.

Mining of fluorspar,
sand and gravel,
stone, and rock asphalt: \$25 per year permit fee issued for up to 5 years or less; renewable for like periods.

BONDS

Surety Bond: \$100 to \$500 per acre of land affected; minimum bond of \$2,000. Required only where the operation is semi-permanent, temporary, or of a hazardous or critical nature.

D. ADMINISTERING AGENCY

Bureau of Surface Mining Reclamation and Enforcement
Department for Natural Resources and Environmental Protection
Capital Plaza Tower, 6th Floor
Frankfort, KY 40601
(502) 564-6940

SECTION IV.
LAND USE REGULATION

CHAPTER 6

MAJOR FACILITY SITING

INTRODUCTION

This chapter outlines the Kentucky Revised Statutes which set out the regulatory activities encompassing the preparation, construction, and operation of energy-producing facilities located within the Commonwealth of Kentucky. The statute also creates and defines the powers and duties of the Kentucky Public Service Commission (hereafter Commission) which regulates these activities.

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 24 - Public Utilities, Chapter 278 - Public Service Commission.

B. TITLE OF REGULATION

Kentucky Administration Regulation (KAR) Title 807 - Public Protection and Regulation Cabinet, Chapter 5 - Public Service Commission.

C. SUMMARY OF REGULATION

1. APPLICABILITY

All owners and operators, except municipalities, who plan to construct any facility to be used for the generation of electricity for the public for compensation, must obtain the required certifications from the Commission.

2. GENERAL REQUIREMENTS

All owners and operators of proposed public electrical generation facilities except municipalities must obtain from the Commission:

- a. a certificate of convenience and necessity (this certificate relates to the need for a new facility); and
- b. a certificate of environmental compatibility.

3. SUBMISSION REQUIREMENTS

a. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The following information must be submitted to the Public Service Commission to allow it to evaluate the applicant's request:

- 1) the applicant-utility's articles of incorporation;
- 2) documented evidence showing the need and demand for the service proposed;
- 3) a full description of the proposed location or route of the new construction or extension, other construction information, and the names of all public utilities, corporations, or persons with whom the proposed new construction is likely to compete;
- 4) three scale maps showing the location or route of the proposed new construction or extension and the location of any like facilities owned by others located in the map area;
- 5) details of the proposed project's financing and final cost; and
- 6) any other information which the Commission feels is needed.

b. CERTIFICATE OF ENVIRONMENTAL COMPATABILITY

There is no application form used by the Commission for the certificate of environmental compatibility. The proposed project owners or operators are required to submit to the Public Service Commission information pertaining to the environmental compatibility of the proposed site which may include, but is not limited to:

- 1) a complete description of the proposed project;

- 2) comments on the effects of the proposed facility with regard to:
 - a) air pollutants emitted;
 - b) the facility's proposed effect on waters of the Commonwealth;
 - c) the treatment, handling, and disposal of solid waste;
 - d) the facility's proposed effect on noise pollution; and
 - e) any other adverse environmental effects which cannot be avoided;
- 3) incorporation papers from corporation involved; and
- 4) any other information the Department considers necessary in making its report to the Commission.

4. PROCEDURE FOR OBTAINING CERTIFICATES

The owners or operators of the proposed project will submit the information necessary for both certificates to the Public Service Commission. The Commission will immediately forward the information pertaining to the certificate of environmental compatibility to the Kentucky Department for Natural Resources and Environmental Protection (hereafter Department) and any other local pollution control district exercising concurrent jurisdiction with the Department.

a. TIME REQUIREMENTS

The Department (or any other local pollution control district exercising concurrent jurisdiction with the Department) must report to the Commission any recommendation on or objections to the proposed facility within 60 days after receiving the application for the certificate of environmental compatibility. The Commission can extend the review period for an additional 30 days.

b. PUBLIC NOTIFICATION, HEARING

A public hearing on the certificate applications, open to all interested persons, is required following the review period and before the Commission makes final decisions. The law does not require public notification by the Commission.

c. FINAL DECISION

After compiling public comment from the hearing the Commission will make final decisions on both certificates and notify the applicant of the decision. The decisions can be appealed to the courts. The applicant must begin construction on the certified facility within 1 year of receipt of certification or the certification becomes invalid.

5. OPERATION REQUIREMENTS

The Commission's jurisdiction only includes the two certifications discussed above. Operational requirements are regulated by other departments in the Kentucky government.

6. FEES

None.

D. ADMINISTERING AGENCY

Public Service Commission
P. O. Box 615
Frankfort, Kentucky 40602
(502) 564-3940

CHAPTER 7

LAND USE

I. GENERAL POWERS

Kentucky has no State-level land use laws or regulations. The State has expressly delegated the powers of land-use control to local planning units. These local planning units may consist of a city, a county, a joint city-county unit and (or) groups of counties with or without the cities within their boundaries. The creation, jurisdiction, and powers of these units are discussed in chapter 19, Local Government Land Use and Natural Resources Control Enabling Laws.

II. ABANDONED MINE LANDS RECLAMATION PROGRAM

INTRODUCTION

This part of the chapter outlines the Kentucky state abandoned mine reclamation program. The program is administered by the Division of Abandoned Lands (hereafter Division) of the Department for Natural Resources and Environmental Protection.

A. AUTHORIZING STATUTE

- Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87).
- Kentucky Revised Statutes, Chapter 350.

B. TITLE OF REGULATIONS

Title 30 Code of Federal Regulation (CFR) - Subchapter R - Abandoned Mine Land Reclamation.

C. SUMMARY OF PROGRAM

1. PROGRAM FUNDING

The source of money which enables the reclamation program to exist is a fund generated by a reclamation fee which each coal mine operator in Kentucky pays into for every ton of coal produced for sale, transfer, or use.

2. APPLICABILITY

Lands and waters are eligible for reclamation if:

- a. they were mined or affected by mining processes;
- b. they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- c. there is no continuing responsibility for reclamation by the operator, permittee (person authorized to mine the land), or agent of the permittee under statutes of the State or Federal Government, or the State as a result of a bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from other parts of the Abandoned Mine Reclamation Fund may be found. Four exceptions to these criteria are discussed in the regulations.

Even though all mined lands are potentially eligible for reclamation, lands mined for coal are given priority over non-coal mined lands.

3. GENERAL REQUIREMENTS

In addition to meeting eligibility requirements reclamation projects must meet one or more objectives expressed in the regulations. Preference among those projects competing for available resources is given to projects meeting higher

priority objectives. The highest priority objectives are:

- a. protection of public health, safety, general welfare, and property from extreme danger resulting from the adverse effects of past coal mining practices;
- b. protection of public health, safety, and welfare from past coal mining not constituting an extreme danger; and
- c. restoration of eligible land and water, and the environment previously degraded by adverse effects of past coal mining practices, including soil conservation and development, water, woodland, fish and wildlife, and agricultural lands.

Other objectives include research and demonstration projects and the repair and (or) replacement of public facilities adversely affected by past coal mining practices.

4. SUBMISSION REQUIREMENTS

There are no Division application forms or informational prerequisites required for a piece of land or water to receive consideration. The Division is inventorying the entire state and expects to create a list of between 3,500 to 5,000 priority sites.

Local communities and (or) individual citizens are encouraged to contact the Division to add lands to the site list or comment on the potential danger of a site already inventoried.

5. PROCEDURE FOR RECLAMATION OF A SPECIFIC SITE

Any person, group, business or agency wishing to have a piece of land or water reclaimed should contact the Division and detail the location and specific problem identified. The Division will send out personnel to visit, photograph, and assess the site. The site will then be

given a priority ranking. Because of the immensity of the undertaking, there is projected to be a waiting time of up to several years.

6. OPERATION REQUIREMENTS

The Division contracts out all reclamation projects, but retains control by either designing the specifics of the reclamation project or having staff involved in on-site supervision. All projects are evaluated both during the actual reclamation and by monitoring the success after the physical reconstruction phase has been completed.

7. FEES

None.

D. ADMINISTERING AGENCY

Division of Abandoned Lands
Department for Natural Resources
and Environmental Protection
404 Ann Street
Frankfort, KY 40601
(502) 564-2141

CHAPTER 8

FLOOD PLAIN MANAGEMENT

INTRODUCTION

This chapter outlines the Kentucky Administrative Regulations that control the construction and operation of dams, bridges, or other associated structures built in any flood plain within the Commonwealth of Kentucky. These regulations delegate the jurisdictional powers to control flood plain management to the Department of Natural Resources and Environmental Protection's (hereafter Department) Division of Water Quality (hereafter Division).

A. AUTHORIZING STATUTE

Kentucky Revised Statute (KRS) Title 12 - Conservation and State Development, Chapter 151 - Water Resources Legislation.

B. TITLE OF REGULATION

Kentucky Administration Regulations (KAR) Title 401, Chapter 4 - Water Resources.

C. SUMMARY OF REGULATION

1. APPLICABILITY

No person, political subdivision of the State, or special district shall commence the construction, reconstruction, relocation, or improvement of any dam, embankment, levee, dike, bridge, fill, or other obstruction across or along any stream, or in the floodway of any stream without a permit issued by the Division, except those projects that are:

- a. constructed by the Kentucky Department of Transportation;

- b. approved by the United States Department of the Army pursuant to the specific criteria set forth in its general permit procedures;
- c. under the jurisdictional review of the Bureau of Surface Mining Reclamation and Enforcement, or have been reviewed and have been classified by the Bureau as presenting no potential hazard to life and (or) property;
- d. projects along a stream whose watershed is less than 1 square mile that have been evaluated by the Division as not potentially damaging to life or residential or commercial property; and
- e. subfluvial stream crossings with either 30 inches of clear cover between stream bottom and top of pipe or under 30 inches and encased in concrete.

2. GENERAL REQUIREMENTS

- a. All construction, reconstruction, relocation or improvement of structures in the flood plain must be permitted by the Division.
- b. All structures submitted for approval to the Division must be prepared by a professional engineer licensed to practice in Kentucky (unless this requirement is waived by the Department).
- c. All structures within the flood plain of any water body within Kentucky shall be expected to adhere to any operational requirements set out by the Division.

3. SUBMISSION REQUIREMENTS

There are different informational requirements depending upon whether the project involves bridges, dams, channel relocations, subfluvial crossings, or fixed docks, piers, wharves, water intakes, etc. The information required may include:

- a. map(s) showing:

- 1) location of proposed project,
 - 2) stream flow (direction and quantity) above and below proposed site,
 - 3) finished floor elevations of all houses within 1,000 feet of the project, and
 - 4) the past flooding information for the affected area;
- b. designs of all proposed structures; and
 - c. any additional information requested by the Division.

4. PROCEDURE FOR OBTAINING A PERMIT

a. TIME REQUIREMENTS

Upon the Division's receipt of all appropriate plans and specifications, the applicant shall be notified in writing within 20 working days that the permit will be issued, denied, or that certain modifications in the plans or specifications must be made before the permit will be issued. For dams and associated structures, a construction permit initially issued will allow construction but not eventual use of the structure. Final written approval by the Department upon receipt of the "as-built" plans and specifications will constitute approval of the facility. This final approval comes after an on-site inspection of the completed structure has been made and a written statement of approval issued by the Department.

b. SPECIAL PERMITS

The Division has a special application for permits to construct within the boundary of a designated Wild River (KRS Chapter 146 and KAR Title 400, Chapter 1). The procedure is similar to the permitting procedure discussed above.

5. OPERATION REQUIREMENTS

- a. Dams and associated structures are to be inspected regularly. The frequency of these inspections will be determined by the Secretary and will be carried out by Division personnel.
- b. The Division will act on public information that suggests any dam, reservoir, levee, embankment, or other water barrier may be a potential danger to the public or property.

6. FEES

None.

D. ADMINISTERING AGENCY

Floodplain Management Section
Division of Water Quality
Department for Natural Resources
and Environmental Protection
Fort Boone Plaza
18 Rielly Road
Frankfort, Kentucky 40601
(502) 564-7885

SECTION V.
ENVIRONMENTAL QUALITY
MANAGEMENT

CHAPTER 9

AIR QUALITY

INTRODUCTION

This chapter outlines the Kentucky Administrative Regulations which require the Department for Natural Resources and Environmental Protection (hereafter Department) to prescribe regulations for the prevention, abatement, and control of air pollution. The establishment and operation of local air pollution control districts is discussed in chapter 19, Local Government Land Use.

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 18 - Public Health, Chapter 224 - Environmental Protection.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 401 - Air Pollution.

C. SUMMARY OF AIR POLLUTION CHAPTERS

1. CHAPTER 50 - GENERAL ADMINISTRATIVE PROCEDURES

- a. Establishes the legal basis for all Kentucky air pollution statutes and regulations.
- b. Divides the State into air quality control regions.
- c. Classifies all Kentucky counties with respect to:
 - 1) particulate matter,
 - 2) sulfur oxides,
 - 3) carbon monoxide,
 - 4) nitrogen dioxide, and
 - 5) hydrocarbons (photochemical oxidants).
- d. Provides for registration of existing sources.

- e. Provides for issuance of permits and compliance schedules.
- f. Provides for monitoring of sources by performance tests and air quality models.
- g. Provides for enforcement of terms and conditions of permits and compliance schedules.

2. CHAPTER 51 - NEW SOURCE REQUIREMENTS; NON-ATTAINMENT AREAS

This chapter establishes the general provisions for new sources (of pollution) for preventing significant deterioration of air quality, and for the construction of stationary sources impacting on non-attainment areas.

3. CHAPTER 53 - AMBIENT AIR QUALITY STANDARDS

This chapter establishes primary ambient air quality standards; levels of air quality which the Department judges are necessary, with an adequate margin of safety, to protect the public health. Also, secondary ambient air quality standards are established as levels necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. These standards are established to prohibit further significant and avoidable deterioration of air quality in areas where air quality presently exists that is numerically equal to or less than the standards expressed in this chapter. The standards are set for particulate matter, sulfur oxides, carbon monoxide, nitrogen dioxide, and hydrocarbons.

4. CHAPTER 55 - EMERGENCY EPISODES

- a. Establishes those levels of pollutant concentrations which must be prevented to avoid significant harm to human health.
- b. Defines those levels of pollutant concentrations which justify the proclamation of an air pollution alert, warning, and emergency.

- c. Requires the owner or operator of an air contaminant source to take specific actions to reduce air contaminant emissions whenever an air pollution alert, warning, or emergency has been declared.

5. CHAPTER 57 - HAZARDOUS POLLUTANTS
This chapter defines and sets forth the administrative procedures and other general provisions related to emissions of:
 - a. asbestos,
 - b. beryllium,
 - c. mercury, and
 - d. vinyl chloride.

6. CHAPTER 59 - NEW SOURCE STANDARDS
This chapter establishes monitoring requirements, performance testing requirements, and other general provisions as related to new sources of air pollution.

7. CHAPTER 61 - EXISTING SOURCE STANDARDS
This chapter establishes monitoring requirements, performance testing requirements, and other general provisions as related to existing sources of air pollution.

8. CHAPTER 63 - GENERAL STANDARDS OF PERFORMANCE
This chapter provides for the control of:
 - a. open burning, by specifically listing the non-prohibited types of open burning;
 - b. fugitive emissions, which are air contaminants in the open air other than from a stack or air pollution control equipment exhaust;
 - c. flares;
 - d. potentially hazardous matter or toxic substances not controlled elsewhere in the regulations of the Department; and
 - e. asphalt paving operations.

9. CHAPTER 65 - MOBILE SOURCE-RELATED EMISSIONS

This chapter establishes emission standards for motor vehicles.

D. SUMMARY OF PERMITTING PROCESS

1. APPLICABILITY

Permits are required for all owners and operators who want to:

- a. construct a new source; modify, alter, add to or replace an existing source; or move an existing source, and
- b. continue operating an existing source which is not permitted, must obtain a permit from the Division and adhere to the requirements set out therein.

2. GENERAL REQUIREMENTS

All owners and operators must have a valid construction permit issued by the Department prior to the start of any construction, and a valid permit to operate, use, or maintain a source.

3. SUBMISSION REQUIREMENTS

In general, one application is sufficient for each source, provided that descriptions of all affected facilities emitting pollutants within that source are included in the application. The type of information required is described on the permit application and includes:

- a. an analysis of the characteristics, properties, and volumes of the air contaminants (taken under normal operating conditions);
- b. site plan and flow diagrams;
- c. registration or identification number of any previously held permits; and
- d. any other information required by the Division.

4. PROCEDURE FOR OBTAINING A CONSTRUCTION PERMIT

There are two distinct permit processes established by Chapter 50. One process applies to the proposed major construction, modification, or reconstruction of a source and to the proposed construction of a source proposing to emit a Natural Emission Standards for Hazardous Pollutants (NESHAPS) pollutant. A second permit process applies for minor source construction or minor modifications.

a. PROCEDURE FOR MAJOR AND NESHAPS SOURCES

1) PRELIMINARY REVIEW

The Department will advise the applicant within 30 days after receipt of an application as to any deficiency in the information submitted. Within 30 days after the receipt of a complete application, the Department will make a preliminary determination whether the source should be approved, approved with conditions or disapproved.

2) PUBLIC NOTIFICATION, HEARING

The Department will make available in at least one location in the region in which the proposed source would be constructed, copies of all information considered in making the preliminary determination. For sources subject to the specific requirements of Chapter 51, the Department must notify the public by prominent newspaper advertisement about the proposed source, the preliminary decision, and the information used in the decision-making process; and of the effect of the source if approved. The public may comment in writing or request a hearing. For all other sources, the public is notified by newspaper with the same information

as above and advised of their right to comment in writing (no right of public hearing). These notices will also be sent to all officials and agencies having jurisdiction over the area where the source will be located.

3) FINAL REVIEW

The Department evaluates all available information including public comments submitted in writing within 30 days after information was made available to the public, comments at public hearing(s), if held, and the applicant's response to the public comments received within 10 days after the close of the public comment period. Final action shall be completed within 150 days after receipt of a completed application, if a public hearing is held, or within 90 days if no hearing is held. Extensions of up to 90 days can be added to the above limits by the Department, and for longer periods if agreed to by the applicant.

b. PROCEDURE FOR MINOR SOURCES

1) PRELIMINARY REVIEW

The Department will notify the applicant within 30 days after receiving a complete application as to any deficiencies in the information submitted. The applicant may then correct or complete the application.

2) FINAL REVIEW

Within 30 days after receipt of a completed application, the Department notifies the applicant in writing of its decision to approve, conditionally approve, or deny the application (with accompanying reasons).

Construction permits will become invalid if:

- a) construction is not commenced within 12 months after receipt of such approval;
- b) if construction is discontinued for a period of 6 months or more; or
- c) if construction is not completed within a reasonable time.

5. OPERATION REQUIREMENTS

The Department, when issuing permits and compliance schedules, dictates specific terms and conditions that they deem necessary to insure compliance with its standards. These obligations may include, but are not limited to:

- a. requirements that the operator install, use, and maintain stack gas and ambient air monitoring equipment in accordance with such methods as the Department requires;
- b. emission sampling by the operator;
- c. emission sampling by the Department; and (or)
- d. any requirement(s) deemed necessary by the Department.

6. FEES

- a. FILING FEE: \$250

Applications withdrawn or permits denied resulting from noncompliance result in forfeiture of the filing fee.

- b. PERMIT FEE: The amount of the permit fee is determined by summing an applicable base fee with all applicable component fees. Failure by the applicant to pay the permit fee within 30 days of the billing date results in the denial of the permit and forfeiture of the filing fee.

E. ADMINISTERING AGENCY

Division of Air Pollution

Dept. for Natural Resources and Environmental Protection

Fort Boone Plaza

18 Rielly Road

Frankfort, KY 40601

(502) 564-3382

CHAPTER 10

WATER QUALITY STANDARDS AND REGULATIONS

INTRODUCTION

This chapter outlines the Kentucky Administrative Regulations (KAR) that control water quality. These regulations designate the Kentucky Department for Natural Resources and Environmental Protection (hereafter Department) as having jurisdiction over this area. Within the Department, the Division of Water Quality (hereafter Division) has primary responsibility with respect to the permitting and enforcement activities.

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Chapter 224 - Environmental Protection.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 401, Chapter 5 - Division of Water Quality.

C. SUMMARY OF REGULATION

1. APPLICABILITY

This chapter regulates:

- a. the procedure to obtain a permit necessary for the construction and operation of a sewage system;
- b. the classification of wastewater systems;
- c. the certification of wastewater system operators;
- d. the procedure for reporting spills and by-passes from sewage systems;
- e. the classification of all surface waters within Kentucky;

- f. the procedure and information necessary for reclassification of surface waters;
- g. acceptable levels of organic and inorganic contaminants allowable for:
 - 1) surface waters in general,
 - 2) water for domestic use,
 - 3) recreational waters, and
 - 4) for outstanding resource waters (i.e. waters included in the Kentucky Wild Rivers Act); and
- h. minimum treatment requirements for all point sources discharging pollutants into the waters of the Commonwealth of Kentucky.

No person shall construct, modify or operate a facility without having received a permit from the Division (facility is defined as constructions or devices used for collecting, pumping, treating, and disposing of liquid or waterborne sewage, industrial wastes, or other wastes). These permits apply for private pre-treatment and treatment facilities (i.e. industrial plants) as well as public and semi-public facilities.

2. GENERAL REQUIREMENTS

General requirements of the regulation specify that:

- a. the facility must be classified;
- b. the facility must be operated by a qualified operator certified for the class of the facility involved (by Kentucky Board of Certification of Wastewater System Operators); and
- c. the operator must adhere to all requirements set out in the Division's permit and this chapter.

3. SUBMISSION REQUIREMENTS

Information required to receive a discharge permit may include, but is not limited to:

- a. a U.S. Geological Survey map with the projected service area outlined and the discharge point identified;
- b. character, quantity, and treatability of anticipated waste;
- c. detailed sets of plans and design specifications of the proposed facility;
- d. proof that applicant has provided for continuous inspection of the facility while under construction;
- e. proof of contract for laboratory services to assure adequate self-monitoring; and
- f. other requirements deemed necessary by the Division for the particular facility proposed.

4. PROCEDURE FOR OBTAINING A PERMIT

a. PRELIMINARY CONSIDERATION

A preliminary consideration is required for proposed facilities in areas where a river basin plan, an area-wide waste management plan and (or) a regional or facility plan has been developed. This is to assure that the proposed facility is compatible with the other plan(s).

b. TIME REQUIREMENTS

If no other plan exists, the applicant is required to submit his application a least 30 days prior to the date the permit is desired. Within 30 days of the submission, the Department shall either approve or deny the permit application.

c. PUBLIC NOTIFICATION, HEARING

Any applicant who disagrees with the decision of the Department may request a hearing by the Department. The applicant will be notified within 20 days of the hearing as to the Department's decision. Any person aggrieved by the final order of the Department may appeal to the courts.

d. PERMIT PERIOD

The permit becomes effective when issued unless otherwise conditioned. If construction is not commenced within 12 months following a permit's issuance, a new permit must be obtained prior to any construction. The construction permit will automatically become an operation permit when the completed facility is inspected and approved by the Division. A subsequent operational permit will be issued.

5. OPERATION REQUIREMENTS

Operational requirements specify that:

- a. the facility must always have a currently certified operator present at the facility or available on short notice;
- b. the facility must monitor water quality and submit reports to the Division at intervals stipulated in the permit(s);
- c. the facility must report any spills or by-passes to the Division; and
- d. the operator must adhere to requirements agreed to between the operator(s) and the Division.

6. FEES

None.

D. ADMINISTERING AGENCY

Division of Water Quality
Department for Natural Resources
and Environmental Protection
Fort Boone Plaza
18 Rielly Road
Frankfort, KY 40601
(502) 564-3410

CHAPTER 11

PUBLIC WATER SUPPLY

INTRODUCTION

This chapter outlines the Kentucky Administrative Regulations controlling public and semi-public water supplies in Kentucky. The chapter is divided between those regulations and permit procedures for the withdrawal of water from public water bodies in Kentucky (Water Resources) and those regulations which establish the standards and safeguards relative to the planning, operation, and maintenance of public and semi-public water supply systems for the protection of public health (Sanitary Engineering). The Division of Water Quality (hereafter Division) within the Department for Natural Resources and Environmental Protection (hereafter Department) has jurisdiction over these areas.

I. WATER RESOURCES

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 12 - Conservation and State Development, Chapter 151 - Geology and Water Resources.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 401 - Dept. for Natural Resources and Environmental Protection, Bureau of Environmental Protection, Chapter 4 - Division of Water Resources.

C. SUMMARY OF REGULATION

1. APPLICABILITY

No person, business, industry, city, county, water district, or other political subdivision can withdraw,

divert, or transfer public water without a permit by the Department except for:

- a. agricultural and domestic purposes (including irrigation);
- b. water used in the production of steam generating plants regulated by the Kentucky Public Service Commission having certificates of environmental compatibility; and
- c. where the average withdrawal rate is 10,000 gallons per day or less.

2. GENERAL REQUIREMENTS

Any person, business, industry, etc., desiring to withdraw, divert, or transfer public water must register with the division and receive a permit for such activity.

3. SUBMISSION REQUIREMENTS

The permit application must identify:

- a. source(s) of water to be affected;
- b. amount of water to be affected; and
- c. any other information requested by the Department.

4. PROCEDURE FOR OBTAINING A PERMIT

a. REVIEW

The applicant must submit a completed permit application to the Department. The Department issues a permit to the applicant if an investigation by the Department reveals that the quantity, time, place, or rate of withdrawal of public water will not be detrimental to the public interests or rights.

b. PUBLIC NOTIFICATION, HEARING

Any person not previously heard in connection with the issuance, denial or modification of the permit, and who considers himself aggrieved, may file a petition for a hearing with the Department. The Department may

schedule a hearing not less than 30 days after the date of petition filing.

c. TIME REQUIREMENTS

If a hearing is held, the hearing officer has 30 days after its conclusion to report to the Department with recommendations. A final order is then made.

5. OPERATION REQUIREMENTS

Water withdrawals of any kind are subject to recording and reporting frequency requirements deemed necessary by the Division.

6. FEES

None.

D. ADMINISTERING AGENCY

Division of Water Quality
Department for Natural Resources
and Environmental Protection
Fort Boone Plaza
18 Rielly Road
Frankfort, KY 40601
(502) 564-3410

II. SANITARY ENGINEERING

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 12 - Conservation and State Development, Chapter 151 - Geology and Water Resources.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 401-Department for Natural Resources and Environmental Protection - Bureau of Environmental Protection, Chapter 6 - Division of Sanitary Engineering.

C. SUMMARY OF REGULATION

1. APPLICABILITY

This regulation applies to each public water system in Kentucky except those systems which:

- a. consist only of distribution and storage facilities (and do not have any collection and treatment facilities);
- b. obtain all their water from, but are not owned or operated by, a public water system to which such regulations apply; and
- c. do not sell water to any person.

2. GENERAL REQUIREMENTS

Preliminary plans for treatment plants only must be submitted to the Department before any financial commitments should be made or any construction initiated. New or expanded facilities should be sited where there is little risk of earthquakes, floods, fires or other disasters. Except for the intake structure, the facility should be out of the 100-year flood plain.

3. SUBMISSION REQUIREMENTS

The following information must be submitted to the Department by a professional engineer on behalf of the applicant:

- a. name and owner of the plant;
- b. USGS quadrangle map showing the site of the proposed facility;
- c. the proposed source of the water and quantity available;
- d. a chemical and bacteriological analysis of the water from the proposed source by a laboratory certified by the Department or its authorized agent;
- e. a description of the proposed facility including size, flow rate in filters, settling basin size and other general criteria; and
- f. an operating plan including anticipated load, hours of operation, area served, and name of plant operator.

4. PROCEDURE FOR OBTAINING A PERMIT

a. TIME REQUIREMENTS

Both preliminary and final plans must be approved by the Department prior to construction. Final plans are also reviewed by the local health department. Final plan approval for construction takes at least 30 days and is valid for one year. To begin operation, the facility must be certified by the Department as having been completed in accordance with the approved plans and specifications.

b. VARIANCES OR EXEMPTIONS

The Department can grant variances or exemptions to facilities that cannot comply with the regulations because of either characteristics of the raw water source or economic considerations. The Department must act on the initial variance or exemption requests within 90 days.

c. PUBLIC NOTIFICATION, HEARING

A public hearing can be held if requested by any interested person. Applicants aggrieved by the Department's final decision may appeal these decisions back to the Department.

5. OPERATION REQUIREMENTS

During construction, a Department representative may inspect the facility at any time and put the contractor on notice of non-compliance until correction of any cited deviation from the approved plans are corrected. During the actual operation of the facility, the suppliers of water must periodically sample the water for turbidity, bacteria, and organic and inorganic contaminants (including levels of fluoride and radionuclides). The frequency of sampling, measurement and analysis techniques and contaminant levels are specified by regulation depending on the size of the system and the water source. Monthly operating reports must also be filed with the Department.

If, during operation, contaminant levels are in violation of the regulations, the supplier of water must notify the Department within 48 hours from the discovery and must notify all persons served by the system.

6. FEES

None.

D. ADMINISTERING AGENCY

Division of Water Quality
Department for Natural Resources
and Environmental Protection
Fort Boone Plaza
18 Rielly Road
Frankfort, Kentucky 40601
(502) 564-3410

CHAPTER 12

SOLID WASTE MANAGEMENT

INTRODUCTION

The Division of Waste Management (hereafter Division) within the Department for Natural Resources and Environmental Protection has jurisdiction over solid waste management in Kentucky.

A. AUTHORIZING STATUTE

Kentucky Revised Statute (KRS) Chapter 224 - Environmental Protection.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 401, Chapter 2 - Hazardous Materials and Waste Management.

C. SUMMARY OF REGULATION

1. APPLICABILITY

Solid waste regulations are applicable to the land disposal of all types of solid wastes. Solid wastes are defined as all putrescible and non-putrescible waste such as garbage, rubbish, ashes, incinerator residue, street refuse, dead animals, demolition wastes, construction waste, and wastes of similar nature.

2. GENERAL REQUIREMENTS

The solid waste regulations require:

- a. permitted site to be located out of flood plain and protected from 100-year flood;
- b. access control and site security;
- c. final cover and intermediate covers for landfill;
- d. ground and surface water protection; and

- e. financial requirements (bond of \$5,000 per acre with a \$10,000 minimum bond).

3. SUBMISSION REQUIREMENTS

The specific types of information needed to apply for a landfill or sanitary landfill permit are:

- a. information on the owner/operator;
- b. a copy of zoning and KRS 109 approval;
- c. a preliminary identification of hydrogeologic information including:
 - 1) soil depth to bedrock;
 - 2) depth to permanent water table;
 - 3) soil type and permeability;
 - 4) type of bedrock; and
 - 5) the flood frequency exposure; and
- d. maps of the facility showing:
 - 1) location of all facilities including roads;
 - 2) calculations on excavation necessary;
 - 3) location of stockpile material to be used to cover waste material;
 - 4) the lease line and property owner as appropriate; and
 - 5) the location of ground water monitoring wells.

4. PROCEDURE FOR OBTAINING A PERMIT

a. PRELIMINARY APPLICATION

Initially the applicant must fill out a preliminary application. The Division will, within 10 days after receipt of the preliminary application, schedule an on-site inspection of the proposed site. The inspection is to determine the feasibility of the site and collect sufficient information to establish the bond to be posted. Within 10 days of the inspection, the Division will notify the applicant to either select a new site or prepare a complete application for review.

b. COMPLETE APPLICATION

If told to prepare the complete application, the applicant will need to:

- 1) complete the Division's application form;
- 2) supply a narrative description and plans of the proposed facility; and
- 3) supply relevant engineering data and drawings requested by the Division.

Upon approval of the permit application, the operator must have the project's engineering plans prepared and certified by a professional engineer registered in Kentucky, showing existing conditions and the proposed final configuration of the site.

c. TIME REQUIREMENTS

Current policy dictates that the Division will notify the applicant by certified or registered mail within 60 days after receipt of the complete application and either approve or deny the application.

d. PUBLIC NOTIFICATION, HEARING

Public notification is required at least once, in a newspaper of local circulation [with respect to the area(s) affected] having a publishing frequency of not less than once a week. The notice provides for a 30-day comment period in which written comments and (or) requests for a public hearing will be accepted. A public hearing is not required by law. If a hearing is not requested, final action will be taken by the Division. If a hearing is requested, it will be held in the locality in which the facility is proposed. A hearing officer's report and recommended order will be submitted to the Secretary of the Department for Natural Resources and Environmental Protection to be used in rendering a final decision.

e. PERMIT PERIOD AND RENEWAL

The permit is issued for a period of 1 year, is non-transferable, and carries the right of successive renewals which may be activated by:

- 1) a renewal inspection at least 60 days prior to the permit expiration date;
- 2) correcting, within the 60 days, any violation noted during the inspection and submitting an acceptable compliance schedule to the Division;
- 3) a further notification of the Division, 45 days before permit expiration with a request for the renewal of the permit; and
- 4) the operator's re-affirmation that the approved plan will be followed.

5. OPERATION REQUIREMENTS

In addition to the permit renewal procedures that must be followed annually, the Division may request the operator to follow special procedures for the daily operation of the landfills, including, but not limited to:

- a. the supervision of all unloading of waste;
- b. immediate spreading and compaction of solid waste in specific depth layers and into separate cells for special wastes;
- c. using daily and intermediate cover to prevent blowing litter, release of odors, and (or) the hazard of fire;
- d. the institution of run-on and run-off controls; and
- e. any other requirements set out by the Division.

6. FEES

No application fees are required. However, an escrow bond of \$5,000 per acre or fraction thereof upon which solid waste will be deposited is required, with a minimum bond of \$10,000. This money will be released only upon receipt of written notice from the Department that the landfill has been properly closed.

U. ADMINISTERING AGENCY

Division of Waste Management
Department for Natural Resources
and Environmental Protection

Fort Boone Plaza

18 Rielly Road

Frankfort, KY 40601

(502) 564-6716

CHAPTER 13

HAZARDOUS/TOXIC WASTE MANAGEMENT

INTRODUCTION

This chapter is divided into two sub-chapters, Non-Radioactive Waste and Radioactive Waste. The Division of Waste Management (hereafter Division) within the Department for Natural Resources and Environmental Protection has jurisdiction over non-radioactive hazardous wastes in Kentucky. The Radiation Control Branch of the Department for Human Resources, (hereafter Department) enforces the radioactive waste regulations.

I. NON-RADIOACTIVE WASTE

A. AUTHORIZING STATUTE

Kentucky Revised Statute (KRS) Chapter 224 - Environmental Protection.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 401, Chapter 2 - Hazardous Materials and Waste Management.

C. SUMMARY OF REGULATION

1. NEW HAZARDOUS WASTE FACILITIES

a. APPLICABILITY

No person, State, or Federal agency shall operate a hazardous waste treatment, storage, or disposal facility without having obtained a permit from the Department. The identification of a hazardous waste is accomplished by either identifying the waste on the list of hazardous wastes or by testing the characteristics of the waste. Both the criteria for identifying a hazardous waste and the list of known

hazardous wastes are listed in 40 CFR 261 (Federal Register, Volume 45, No. 98, Part 261, beginning on Page 33119, dated Monday, May 19, 1980).

b. GENERAL REQUIREMENTS

General requirements include:

- 1) registration for generators, haulers, and recyclers of hazardous waste;
- 2) permit for treatment, storage, and disposal of hazardous waste;
- 3) permit-by-rule for existing treatment, storage, and disposal facilities (existing on November 19, 1980).
- 4) financial requirements:
 - a) closure trust fund;
 - b) post-closure trust fund for land disposal only; and
 - c) liability insurance; and
- 5) treatment, storage, and disposal provisions, including:
 - a) siting and location for geology;
 - b) water analysis;
 - c) security system(s);
 - d) procedure for general inspections;
 - e) preparedness and prevention plans;
 - f) contingency plans;
 - g) record keeping and reporting procedures; and
 - h) ground water monitoring for land-based facilities.

c. SUBMISSION REQUIREMENTS

The following must be submitted with the permit application:

- 1) a listing of the waste types which will be stored, treated, or disposed;

- 2) a preliminary identification of the hydrogeologic information including:
 - a) a description of soil types and permeabilities identifying the suitability of the site for its proposed use;
 - b) a description of the surface and subsurface geology with consideration of such hazards as seismic activity, floods, subsidence, or stability; and
 - c) hydrologic characteristics, including the location of surface and ground water, current and potential, uses and flow;
- 3) a description of land use and zoning of the site and the lands within 1,000 feet of the site; and
- 4) two copies of a preliminary map indicating the location of the proposed facility. The maps also must include:
 - a) a topographic map of the site showing the location of all facilities including roads, buildings, management areas, utility easements, and points of hazardous waste generation;
 - b) calculations showing the extent of the excavation required to construct the facility;
 - c) the buffer zone;
 - d) the legal boundaries for which lease or clear title is held; and
 - e) the location of proposed environmental monitoring stations.

d. PROCEDURE FOR OBTAINING A PERMIT

1) TIME REQUIREMENTS

Initially the applicant must fill out a preliminary application. The Division will, within 10 days after receipt of this application,

schedule an onsite inspection of the proposed site. This inspection will determine site feasibility. Within 10 days after the field inspection, the Division will request the applicant to either select a new site or prepare a complete application for review. In accordance with KRS 224, the Division will inform the applicant as to their decision by certified or registered mail within 90 days after receipt of the complete application.

Upon approval of the permit application, the operator must have the project's engineering plans prepared and certified by a professional engineer registered in Kentucky, showing existing conditions and the proposed final configuration of the site.

2) PUBLIC NOTIFICATION, HEARING

The Division will then notify the operator to advertise. This demands publication, at least once, in a newspaper of local circulation (with respect to the area(s) effected) having a publishing frequency of not less than once each week. Proof of notice must be submitted to the Division. The advertisement provides notice to the public and provides for a 30-day comment period in which all written comments related to the final approval of the project will be accepted and become part of the information used by the department to arrive at its final decision. The public may request a hearing, and the views expressed there will also be considered with respect to the final decision, as will the hearing officer's report and recommended order.

3) PERMIT PERIOD AND RENEWAL

The permit is:

- a) issued for 1 year;
- b) non-transferable and carries the right of successive renewals which may be activated by:
 - (1) notifying the Division, not less than 90 days prior to the expiration of the permit, of the operator's intention to continue the facility and requesting that the Division renew the permit;
 - (2) including in the notification some affirmation that the previously approved plan will continue to be followed;
 - (3) having a re-permit inspection by the inspector 60 days prior to the expiration of the permit; and
 - (4) correcting, within the 60 days, any violation noted during the inspection, and by submitting an acceptable compliance schedule to the Division.

2. EXISTING HAZARDOUS WASTE FACILITIES

a. APPLICABILITY

No person, state, or Federal agency shall operate a hazardous waste treatment, storage, or disposal facility without having obtained a permit from the Division. A hazardous waste is identified from the list of hazardous wastes or by testing the characteristics of the waste. Both the criteria for identifying a hazardous waste and the list of known hazardous wastes are listed in 40 CFR 261 (Federal Register, Volume 45, no. 98, Part 261, beginning on Page 33119, dated Monday, May 19, 1980).

b. GENERAL REQUIREMENTS

An operator of an existing hazardous waste management facility is required to register with the Division of Waste Management not later than September 2, 1980 to obtain a permit by rule. Failure to register could result in the loss of permit by rule.

c. SUBMISSION REQUIREMENTS

Information that is required by the Division's registration form includes:

- 1) a listing of each hazardous waste which is stored, treated, or disposed at the facility;
- 2) a current topographic map of the site detailing the location, watershed area of land affected, and other physical features requested by the Division.

d. PROCEDURE FOR OBTAINING A PERMIT

1) REVIEW

The Division will review the operator's application and accompanying information for completeness. If it does not appear that there is the threat of an imminent hazard to public health or substantial environmental impacts from the facility, the Division will issue a permit by rule. If there is a question as to some impact of the facility the Division may withhold the permit until additional information is presented by the operator so as to remove any question of hazard.

2) PERMIT PERIOD AND RENEWAL

The permit is:

- a) issued for 1 year;
- b) non-transferable but subject to successive renewal; and

- c) subject to all applicable Federal, State, and local laws and regulations.

3. HAZARDOUS WASTE GENERATORS AND RECYCLERS

a. APPLICABILITY

No person, State or Federal agency shall engage in the generation of waste without having made the determination that the waste is hazardous or non-hazardous.

b. GENERAL REQUIREMENTS

A generator or recycler of a hazardous waste is required to register with the Division of Waste Management not later than September 2, 1980. Failure to register is a violation and could result in a fine.

c. SUBMISSION REQUIREMENTS

Information required by the Division's "Registration as a Hazardous Waste Generator" form includes:

- 1) a summary of each hazardous waste involved;
- 2) the tonnage (annual) for the preceding year ending June 30; and (or)
- 3) if no waste is generated in the previous year, the applicant should estimate the tonnage per waste type anticipated (this estimate is subject to review and approval by the Division).

d. PROCEDURE FOR OBTAINING A PERMIT

Upon receipt of an application, the Division will review the information presented for completeness. If the Division determines after review and verification that the requirements for registration have been satisfied, a certificate of registration will be issued. The certificate is subject to the same time periods and limitations as permits for existing hazardous waste facilities.

4. OPERATION REQUIREMENTS

Operational requirements include:

- a. waste analysis - on wastes handled for predetermined parameters and frequency;
- b. facility inspection - on a predetermined schedule;
- c. record keeping - all waste handled at least for 3 years;
- d. reporting - annually for generators and quarterly for treatment, storage, and disposal facilities; and
- e. ground water monitoring - according to an approved plan for land disposal and surface impoundments.

5. FEES

a. GENERATOR AND RECYCLER REGISTRATION AND ANNUAL RENEWAL

<u>Quantity/year</u>	<u>Fee</u>
13.3 tons - 100 tons	\$200
101 tons - 300 tons	\$300
301 tons - 500 tons	\$400
501 tons or more	\$500
Major modification	\$100
Minor modification	\$ 50

b. TREATMENT, STORAGE, DISPOSAL, AND ANNUAL RENEWAL

<u>Facility</u>	<u>Fee</u>
Disposal facility	\$5,000
Treatment and storage facility	\$1,000
Modification	\$50 - \$150

Public-owned facilities are exempt from fees

D. ADMINISTERING AGENCY

Division of waste Management
Department for Natural Resources
and Environmental Protection
Fort Boone Plaza
18 Rielly Road
Frankfort, KY 40601
(502) 564-6716

II. RADIOACTIVE WASTE

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 18 - Public Health, Chapter 211 - State Health Programs.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 902 KAR 100 - Department for Human Resources, Bureau for Health Services.

C. SUMMARY OF REGULATIONS

1. APPLICABILITY

These regulations apply to the possession and use of all sources of ionizing and electronic product radiation in Kentucky and to the handling, transporting, and disposal of radioactive waste, except where exclusive jurisdiction has been retained by the United States Nuclear Regulatory Commission.

2. GENERAL REQUIREMENTS

Except for certain exemptions, no person shall manufacture, produce, receive, possess, use, transfer, own, acquire, or dispose of radioactive materials except as authorized in a specific or general license issued by the Department for Human Resources. In addition, licensees shall adhere to radiation exposure standards for individuals and for radiation concentrations above natural background levels for air and water as set out in the regulations.

3. SUBMISSION REQUIREMENTS

Licenses for radioactive material are of 2 types: general and specific. For general medical in vitro and in vivo licenses, Departmental forms must be used when submitting said information. The process actually constitutes a registration, and upon payment of the appropriate fee,

general license status is obtained. Registration is required annually. The general license, usually involving medical, commercial, educational, or research uses is subject to applicable requirements of these regulations.

All specific licenses, usually for radioactive source materials, require the annual submission of an application to the Department and the annual issuance of a licensing document by the Department. Such licensees shall be subject to all applicable requirements of these regulations and to such limitations as may be specified in the licensing document.

4. PROCEDURE FOR OBTAINING A LICENSE

Applications for specific licenses must be filed on a form prescribed by the Department and pre-licensing visits may be made to the applicant's facility to obtain additional information deemed necessary by the Department.

A specific license for specific activities will be issued if:

- a. the applicant is qualified in training and experience to use the material in question for the purpose requested, in accordance with the regulations in such a manner as to protect health and minimize danger to life and property;
- b. the applicant's proposed equipment, facilities, and procedures are adequate to protect health and minimize danger to life and property;
- c. the issuance of the license will not be adverse to the health and safety of the public; and
- d. the applicant satisfies any applicable special requirements in these regulations.

5. OPERATION REQUIREMENTS

Upon the Department's request, the licensee or registrant must:

- a. keep records showing the receipt, transfer, and disposal of all sources of radiation;
- b. afford the Department, at all reasonable times, opportunity to inspect sources of radiation and the premises and installations wherein such sources of radiation are used or stored; and
- c. perform, or permit the Department to perform, such tests as the Department deems appropriate including, but not limited to, tests of:
 - 1) locations wherein sources of radiation are used and stored;
 - 2) radiation detection and monitoring instruments; and
 - 3) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

In addition, the Department reserves the right to incorporate any additional requirements, rules, regulations and (or) conditions subsequent to the issuance of a license as it deems appropriate or necessary in order to minimize danger to public health, and safety, or property and to prevent loss or theft of licensed material.

6. FEES

The amount of the application fee varies according to the activities to be licensed, but the total fees charged (as of June 30, 1981) for radioactive material licenses at any institution, facility or office must not exceed \$75.00. Annual registration and licensing fees are required by 902 KAR 100:012.

D. ADMINISTERING AGENCY

Radiation Control Branch

Department for Human Resources

275 East Main Street

Frankfort, KY 40621

(502) 564-3700

CHAPTER 14

NOISE REGULATIONS

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 18 - Public Health,
Chapter 224.710 - 224.800 - Kentucky Noise Control Act.

B. TITLE OF REGULATION

None.

C. SUMMARY OF STATUTE

The Kentucky State Noise Control Act authorizes the Kentucky Department for Natural Resources and Environmental Protection (hereafter "Department") to adopt regulations and develop plans for the control of environmental noise (as opposed to workplace or occupational noise). The Act also authorizes all local governments (city or county) to develop, adopt, and maintain a comprehensive program of noise regulation. This may include a noise control plan. A model noise ordinance developed by the Department is available for use by local governments. Noise measuring equipment and the training to use it are also provided by the Department to local governments upon request.

SECTION VI.
SOCIAL/ECOLOGICAL
PRESERVATION

CHAPTER 15

RARE AND ENDANGERED SPECIES

INTRODUCTION

This chapter outlines the Kentucky Administrative Regulations that control activities relating to endangered species of fish and wildlife within the Commonwealth. The regulations allow Kentucky to comply with the Federal Endangered Species Act of 1973 as amended. The Kentucky law gives the jurisdiction for enforcing these regulations to the Department of Fish and Wildlife Resources (hereafter Department).

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 12 - Conservation and State Development, Chapter 50 - Fish and Wildlife Resources.

B. TITLE OF REGULATION

Kentucky Administrative Regulations (KAR) Title 301 - Department of Fish and Wildlife Resources, Chapter 4 - Wildlife.

C. SUMMARY OF REGULATION

1. APPLICABILITY

This regulation pertains to the buying, selling, transporting, importing, processing, and possessing of State- and Federally-protected endangered fish and wildlife species appearing on present and reviewed future lists issued by the State and Federal government. Any species or subspecies designated as endangered by the Secretary of the Interior on a current U.S. List of Endangered and Threatened Wildlife is considered an endangered species in Kentucky. The Commonwealth of Kentucky also has unofficial lists of rare, threatened, or endangered species of

mammals, birds, amphibians, reptiles, fish, mussels, and vegetation in Kentucky, some of which are affected by these regulations.

2. GENERAL REQUIREMENTS

It is unlawful for any person to import, transport, possess, process, sell, or offer for sale any endangered species of fish and wildlife, or parts thereof, except under a permit issued by the Department. These permits are for zoological, educational, or scientific purposes, and for the propagation of such fish and wildlife in captivity for preservation purposes.

3. SUBMISSION REQUIREMENTS

A State permit is required to capture and hold, or bring a Federal or State endangered species into Kentucky. The permit application must be accompanied by any other applicable Federal or State permits. Permit applications should include:

- a. the species of wildlife to be obtained;
- b. the number involved;
- c. the person or business where the wildlife species are to be obtained;
- d. the method of transportation; and
- e. any other information the Department may deem necessary to evaluate the application.

4. PROCEDURE FOR OBTAINING A PERMIT

To obtain a permit, the person need only fill out a Department application and submit it to the Commissioner of the Department for approval or denial.

5. OPERATION REQUIREMENTS

There are no set operational requirements enforced by the Department in conjunction with the issuance of a permit, but the Department may request the recipient to submit periodic reports pertaining to the permitted activities.

6. FEES
None.

D. ADMINISTERING AGENCY

Department of Fish and Wildlife Resources
Arnold Mitchell Building #1
Game Farm Road
Frankfort, KY 40601
(502) 564-4406

CHAPTER 16

ARCHEOLOGICAL AND HISTORICAL

INTRODUCTION

This chapter outlines the regulations promulgated pursuant to the National Historic Preservation Act of 1966. This Act established a program for the preservation of additional historical, architectural, archeological, and culturally significant properties throughout the Nation. This Federal law has an effect on many areas of natural resource exploration and accompanying environmental concerns within the Commonwealth of Kentucky. The Kentucky Heritage Division of the Kentucky Department of the Arts administers this program at the State level.

A. AUTHORIZING STATUTE

- The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).
- Executive Order 11593 - Protection and Enhancement of the Cultural Environment.
President's Memorandum of Environmental Quality and Water Resource Management, July 12, 1978.

B. TITLE OF REGULATION

Chapter VIII, Advisory Council on Historic Preservation's Regulations for the Protection of Historic and Cultural Properties (36 CFR, Part 800).

C. SUMMARY OF REGULATION

1. APPLICABILITY

This law requires that Federal agencies with direct or indirect jurisdiction over a Federal, federally assisted or federally licensed project, give the Federal Advisory

Council of Historic Preservation (hereafter Council) an opportunity to review projects which may affect properties included in or eligible for inclusion in the National Register of Historic Places prior to the agency's approval of any such project.

2. GENERAL REQUIREMENTS

The Federal agency must demonstrate that no properties included in or eligible for inclusion in the National Register of Historic Places will be affected by their proposed project. Should a structure or a site included in or eligible for inclusion in the National Register be affected by a project, the Federal agency must comply with the Council's regulations. These regulations insure that the Federal agency will take into consideration the project's effect on cultural resources.

3. SUBMISSION REQUIREMENTS

The Federal Agency involved in the project or program must:

- a. identify all properties listed in or eligible for listing in the National Register of Historic Places.

This is accomplished by:

- 1) checking the National Register;
- 2) consulting with the Kentucky State Historic Preservation Officer, who is also the Executive Director of the Heritage Division;
- 3) making a historic survey of any structure 50 years old or older which would be altered permanently either visually or physically by the project. Photographs and a completed Historic Sites Inventory form should be submitted to the Kentucky State Historic Preservation Officer for review;

- 4) making an archeological survey on any previously undeveloped land and preparing a survey report for review and approval by the Kentucky State Historic Preservation Officer; and
- 5) seeking a Determination of Eligibility for each potentially eligible property from the Secretary of the Interior's designee, the Keeper of the National Register.

b. submit the project to the Determination of Effect process and, if necessary, subsequent processes.

4. PROCEDURE FOR OBTAINING PROJECT APPROVAL

For each National Register or eligible property that may be impacted by the proposed project, the agency official, in consultation with the State Historic Preservation Officer, must determine whether the project will have an effect on the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria. It may be determined that the project has no effect, an adverse effect, or no adverse effect. Projects identified as having no effect may proceed; however, a determination of no effect can be challenged by the public, in which case the Advisory Council on Historic Preservation must respond. On projects determined to have an effect, the Federal Agency, the Kentucky State Historic Preservation Officer and the Executive Director of the Advisory Council may work together to mitigate the adverse effects. A preliminary case report and an information meeting are used to keep the public informed. The project can be allowed to proceed if it is determined to be in the public's interest to proceed or if alternatives are found to minimize any effects.

5. OPERATION REQUIREMENTS

There are no operational requirements with which to comply once the project has been approved. However, if it is discovered that a previously unidentified effect may occur to a National Register or eligible property, procedures similar to those outlined above may be deemed necessary.

6. FEES

None.

D. ADMINISTERING AGENCY

Heritage Division
Department of the Arts
104 Bridge Street
Frankfort, Kentucky 40601
(502) 564-6683

CHAPTER 17

WETLANDS

INTRODUCTION

This chapter outlines the legislation that affect the creation, management, alteration, or elimination of wetlands within the Commonwealth of Kentucky.

A. AUTHORIZING STATUTE

There are no chapters in the Kentucky Revised Statutes (KRS) that isolate wetlands and control by legislation their creation, management, alteration, and (or) elimination. Alternatively, wetlands in Kentucky are directly and indirectly affected by legislation focusing on other areas of natural resource exploration, extraction, and (or) conservation.

B. TITLE OF REGULATIONS

There are no Kentucky Administrative Regulations (KAR) directly controlling wetland resources. As with the statutes discussed above, regulations in other areas have both direct and indirect effects on the existence, quality, and management of wetlands.

C. SUMMARY OF LEGISLATION AND REGULATIONS AFFECTING WETLANDS

1. DIRECT EFFECTS

a. SUPPORTIVE

KRS Chapter 262, controls the creation of Soil and Water Conservation Districts. These districts may function as managers of wetlands within their territory.

The statute also requires, where individual watersheds are identifiable, that watershed conservancy

subdistricts be created. The conservation of wetlands within the watershed subdistricts is seen as a vital link in conserving Kentucky's water resources.

b. NON-SUPPORTIVE

Working at cross purposes to soil and water conservation laws is legislation creating levee, reclamation, and drainage districts. These statutes encourage the elimination of wetlands for purposes of public health, convenience, and (or) welfare.

The specific statutes controlling the alteration or elimination of wetlands are:

1. KRS Chapter 266 - Levees;
2. KRS Chapter 267 - Drainage and Reclamation Act of 1912;
3. KRS Chapter 268 - Drainage and Reclamation Act of 1918; and
4. KRS, Chapter 269 - Miscellaneous Provisions as to Ditches, Drainage, and Reclamation.

2. INDIRECT EFFECTS

Wetlands are affected by the implementation and enforcement of legislation and regulations governing the surface effects of surface and underground coal and non-metalliferous mining in Kentucky (see chapter 3, Energy Resources, and chapter 5, Construction Materials, this Guidebook). The mining laws affect wetlands by controlling:

- a. coal (surface and underground) mining reclamation procedures and schedules;
- b. post-mining vegetative cover;
- c. the minimization of disturbance to an area's hydrologic system (during all phases of the mining process);
- d. placement of excess spoil; and
- e. mining in areas designated as prime farmland.

Wetlands are also indirectly benefited by statutes and regulations controlling oil, gas, and saltwater mining (see chapter 3, Energy Resources) and construction in flood plains (see chapter 8, Flood Plain Management).

D. ADMINISTERING AGENCY

Division of Water

Department for Natural Resources
and Environmental Protection

Fort Boone Plaza

18 Rielly Road

Frankfort, Kentucky 40601

(502) 564-3410

CHAPTER 18

COASTAL ZONE REGULATIONS

Because the Commonwealth of Kentucky is a land-locked state, it has no coastal area and, thus, no coastal zone legislation or regulations.

SECTION VII.
LOCAL REGULATORY
POLICY

CHAPTER 19

LOCAL GOVERNMENT LAND USE AND NATURAL RESOURCE CONTROL ENABLING LAWS

INTRODUCTION

This chapter outlines the Kentucky Revised Statutes that control land use and zoning within the Commonwealth of Kentucky. These powers and duties are delegated to local governmental planning units by State enabling statutes. The enabling statutes allow local units to control specific areas of law, including land use and some natural resource and environmental laws within the areas of their jurisdiction. Specific statutes covering specific areas of law must be reviewed separately as they are too numerous and detailed to present here.

A. AUTHORIZING STATUTE

Kentucky Revised Statutes (KRS) Title 9 - Counties, Cities and Other Local Units, Chapters 65-109.

B. TITLE OF REGULATIONS

There are no state-level regulations promulgated pursuant to the Kentucky statutes. Each individual local planning unit creates its own ordinances and (or) regulations controlling the land uses allowable within their jurisdiction.

C. SUMMARY OF STATUTES

1. PLANNING UNITS

The following local governmental planning units may be created: a single city planning unit, a single county planning unit (not including any incorporated cities within the county's boundaries), or any combination of adjacent cities and (or) counties.

The procedures for creation of a local governmental planning unit are discussed in the Kentucky statutes and vary according to the unit's functions and the population of the cities and counties involved. Before any city or county may create an independent planning unit, they must attempt to create a joint unit with surrounding governments. For example, a city must first inquire with the county in which they are situated about forming a joint unit. Only upon the county's refusal or non-reply to the request within 60 days may an independent city planning unit be created. Counties must make similar inquiries with cities within their boundaries before forming independent units.

Regional planning units may be created by counties and cities identifying similar needs. These regional units may be created without automatically terminating any smaller planning units within the region, as long as the function of all the units are expressly delineated upon creation of the larger regional unit.

a. PREPARATION OF COMPREHENSIVE PLANS

The laws of Kentucky require planning commissions of each unit to prepare a comprehensive plan to serve as a guide for public and private decisions and actions with respect to land use within the unit's jurisdiction. The elements of the comprehensive plan must be prepared with a view towards the objectives and policies of the unit. These elements are to be periodically reviewed and, if necessary, changed to reflect the social, economic, technical, and physical changes that may occur within the unit.

b. ZONING

Any city or county that is a member of a planning unit, which has adopted the land-use plan elements of their unit, may divide the territory within their area of jurisdiction into zones, on an interim or permanent basis, to promote the public health, safety, and morals of the areas, to promote orderly and harmonious development within the unit and to regulate the density of populations and intensity of land use so as to provide for adequate light and air. A public hearing is required before any zoning change can be made. A 14-day notice to the public is required prior to such a hearing.

Zoning revisions of the comprehensive plans may allow the local planning units to regulate:

- 1) activities engaged in on any land within the jurisdiction of the planning unit, including:
 - a) the filling and (or) excavation of land;
 - b) the removal of natural resources;
 - c) the use of watercourses;
 - d) the use of natural or artificial bodies of water; and
 - e) land which is subject to flooding;
- 2) local building codes, including regulations controlling the creation of subdivisions;
- 3) land use with respect to airports, highways, and other transportation facilities; and
- 4) districts of special interests, including but not limited to:
 - a) exclusive use districts;
 - b) planned industrial districts; and
 - c) conservation districts.

2. AIR POLLUTION CONTROL DISTRICTS

The Commonwealth of Kentucky, by statute, has authorized the creation of air pollution control districts in every county in the state. Activation must be done by the county fiscal court. If there are first- or second-class cities in the county, the fiscal courts of these cities must also act. At present, only Jefferson County (Louisville area) has activated its district. All other counties may activate an air pollution control district upon the finding that:

- a. air pollution, within the specific county, interferes with the comfortable enjoyment of property; and
- b. enactment and enforcement of local ordinances will not control the problem.

Once the county government has satisfied the State as to its legal authority and resources, the county enjoys concurrent jurisdiction with the State.

The districts may adopt more stringent standards and regulations than those adopted by the Commonwealth of Kentucky. They may also issue permits necessary for operation of an air pollution source in the county and issue injunctions for any violations of any regulations or ordinance adopted by the air pollution control district. For more specifics on the creation and powers of these districts, see KRS Chapter 77.

D. ADMINISTERING AGENCY

Contact local planning agency.