

224.16-070 Water quality certifications for surface coal mining operations for applicants eligible for Nationwide Permit 21 or 26.

- (1) This section shall apply to the cabinet's issuance, waiver, or denial of water quality certifications for surface coal mining operations, as defined in KRS 350.010, if:
 - (a) The applicant for the water quality certification has applied to the cabinet for a permit in accordance with KRS Chapter 350 and the administrative regulations promulgated pursuant thereto;
 - (b) The applicant for the water quality certification is eligible for Nationwide Permit 21 or 26 issued in accordance with 33 U.S.C. sec. 1344 and 33 C.F.R. Part 330, Appendix A;
 - (c) The applicant's surface coal mining operation will not impact waters of the Commonwealth designated by the cabinet in its water quality standards as outstanding state or national resource waters or as cold water aquatic habitat; and
 - (d) The applicant's surface coal mining operation will not impact waters of the Commonwealth which are wetlands one (1) acre or more in size.
- (2) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to Nationwide Permit 21 or 26 is less than four hundred eighty (480) acres for the surface coal mining operation meeting the criteria of subsection (1) of this section, the cabinet shall issue a water quality certification containing only the standard conditions set out in paragraphs (a) to (e) of this subsection.
 - (a) All earthwork operations shall be carried out so that sediment runoff and soil erosion to waters of the Commonwealth are controlled and minimized. Best management practices for water pollution control shall be used by the surface coal mining operation.
 - (b) Heavy equipment, such as bulldozers, backhoes, and draglines, shall not be used or operated within waters of the Commonwealth outside of the boundaries of a permanent structure, unless that use cannot be avoided. If use of heavy equipment within waters of the Commonwealth outside the boundaries of a permanent structure is unavoidable, then the work shall be performed so as to minimize resuspension of sediments and disturbance to substrates, banks, or riparian vegetation.
 - (c) Measures shall be taken to prevent and to control spills of fuels, lubricants, and other materials from entering waters of the Commonwealth.
 - (d) Any fill or riprap shall be of a composition that shall not cause violations of water quality standards by adversely affecting the biological, chemical, or physical properties of waters of the Commonwealth. If riprap is used, it shall be of a weight and size that bank stress or slump conditions shall not occur.
 - (e) Removal of riparian vegetation outside the boundaries of a permanent structure shall be minimized.
- (3)
 - (a) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to Nationwide Permit 21 or 26 is greater than or equal to four hundred eighty (480) acres for the surface coal mining operation meeting

the criteria of subsection (1) of this section, the cabinet may require a water quality certification containing conditions in addition to those standard conditions identified in subsection (2) of this section for the purpose of protecting water quality.

- (b) The water quality certification may require mitigation at a maximum ratio of one (1) acre of mitigation area for every one (1) acre of permanent loss of waters of the Commonwealth on the permitted area, except for waters of the Commonwealth isolated as a result of the permanent structure.
 - (c) For waters of the Commonwealth isolated as a result of a permanent structure, the maximum mitigation ratio shall be five-tenths (0.5) acre of mitigation area for every one (1) acre of those isolated waters.
 - (d) The cabinet shall accept mitigation on the permitted area, mitigation off the permitted area, mitigation banking of waters of the Commonwealth, or any combination thereof, or any other mitigation measure acceptable to the cabinet.
 - (e) Upon completion of all mitigation work required by the water quality certification required by this subsection, the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work has been completed in accordance with the conditions of the water quality certification. The surface coal mining operation shall promptly submit the professional engineer's certification to the cabinet. The cabinet shall promptly review the certification and provide to the surface coal mining operation written notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification.
- (4) The cabinet shall not require a water quality certification for a road crossing on the permitted area impacting less than two hundred (200) linear feet of waters of the Commonwealth.
 - (5) The cabinet shall confer with representatives of the surface coal mining industry and representatives of environmental organizations with an interest in water quality in developing a manual of approvable options for mitigation on permitted areas, mitigation off permitted areas, mitigation involving banking of waters of the Commonwealth, and removal of temporary sediment structures at surface coal mining operations as a mitigation option.
 - (6)
 - (a) The cabinet shall have ten (10) working days to make a determination that an application for a water quality certification is administratively complete or to notify the applicant of specific deficiencies.
 - (b) The cabinet shall have forty (40) working days to review an administratively complete application for a water quality certification, to issue or waive that certification, or to deny that certification with specific deficiencies identified, and to notify the applicant of the final determination. If the cabinet has not notified the applicant of its final determination within forty (40) days of receiving an administratively complete application, the water quality certification shall be deemed waived.

- (7) Nothing in this section shall be construed as abrogating the cabinet's ability to require water quality certifications for surface coal mining operations that do not meet the criteria of subsection (1) of this section.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 365, sec. 1, effective July 15, 1994.