
Thursday, February 21, 2013



**WRITTEN TESTIMONY OF TOM FITZGERALD, DIRECTOR,
KENTUCKY RESOURCES COUNCIL, ON HOUSE BILL 165**

Tom FitzGerald

Director

Board of Directors

Joe Childers

Chair

Vacant

Vice Chair

Liz Edmondson

Recording Secretary

Betsy Rudd Bennett

Roger Shott

Bruce Boyens

P. O. Box 1070

Frankfort, KY 40602

(Phone) 502-875-2428

(Fax) 502-875-2845

fitzKRC@aol.com

www.kyrc.org

Mr. Chairman, Committee Members, Representative Damron:

I'm here to express the Council's concerns regarding the potential impacts of exempting quarries from regulation provided that the quarried material was utilized on the property owned by the person conducting the quarrying activity. The bill, as proposed, defines a "rock quarry" as strip mining or removal of minerals, ores, or other solid matter, which may include limestone, dolomite, sand and gravel, clay, fluorspar, and other vein minerals, by dredging or excavating **from any waterway**.

Under current law, activity such as that defined in this bill as a "rock quarry," is subject to state regulation in order to protect public safety, property, and the environment, and is regulated irrespective of the disposition of the excavated material. Exemption from the non-coal regulation program of quarrying from waterways on one's own property for use on the property, could result in damage both to the environment, and to the interests of adjoining and nearby properties.

Kentucky's non-coal regulations were adopted in order to fulfill the obligation created by the General Assembly when Kentucky became signatory to the "Interstate Mining Compact" codified at KRS 350.300. Currently, state regulation provides that no person shall engage in a mineral operation or related activity "without having obtained from the cabinet, a permit for the mineral being mined." The Interstate Mining Compact is intended to protect the environment, and "the public and ... adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations[.]"

The heart of the problem with exempting quarrying that is done a property based on the "farm purpose" end use of the quarried material, is that the adverse effects that can occur from unregulated quarrying conducted without compliance with certain key environmental standards, are wholly unrelated to the end use of the quarried rock. Adverse effects of excavating rock and other non-coal minerals from waterways can occur regardless of whether the quarried rock is used onsite or sold for off-site use, including:

- a. Blasting damage from vibration and flyrock that can endanger lives or adversely affect other properties and structures;
- b. Dewatering of aquifers that serve as water supply for adjacent properties;
- c. Changes in water quality from runoff if disturbed areas are not managed to control sedimentation;
- d. Mining occurring close to property boundaries that adversely affects adjoining land uses;
- e. Potential creation of unsafe conditions absent proper signs and markers; and
- f. Lack of reclamation of disturbed areas, including excavated pits that can pose a public safety problem.

Exempting rock quarries, as defined in the bill, regardless of size, location, and manner of operation, from regulation because of the end-use of the quarried material, heightens the risk of the occurrence of these and other adverse effects that led to the development of this long-standing program.

The bill is of concern also because of the lack of definitions for terms such as what constitutes a “waterway.” Lacking a definition of the term in KRS Chapter 350, a reviewing court might default to the definition of “waters” or “waters of the commonwealth” as defined in KRC Chapter 224, which would include in addition to rivers, streams, lakes, impounding reservoirs, springs, and marshes. The exemption allows the quarrying and transportation of quarried mineral from one site owned by the person to his or her “private farm lands” for “farm purposes,” both terms being undefined, even where the rock is moved from the excavated site across a public road. It is unclear whether the intent is limited to use at a property that is contiguous but for the existence of the public road, or whether the excavated material could be transported to another location irrespective of distance provided that the end use was for “farm purposes.” Additionally, the bill exempts farm-purpose “strip mining” in waterways, which could allow crushing and sizing of quarried rock, sand, and gravel, generating uncontrolled noise and dust.

Even if narrowed by providing definitions, tonnage limits, size limits, or other ways to bound the exemption, there is a more fundamental concern that this ill-defined exemption will allow an unscrupulous quarry operator to skirt the regulatory requirements by claiming to be quarrying from a “farm” for “farm purposes. The potential for an individual or company to use the exemption to undercut competitors in the marketplace by claiming that the quarrying is for farm use, and instead selling the quarried material off-site, is clear. The lack of recordkeeping or reporting requirements, and the lack of obligation to notify the Cabinet of the proposed quarrying, would prevent the Cabinet from being able to assure that the limits of such an

exemption were not transgressed. There are some 129 noncoal operators holding 229 noncoal permits in the Commonwealth, and only five (5) inspectors assigned to these operations, making it very difficult for the state to police such an exemption. The inspector would have to observe the excavation of the material and track the disposition of each load of material in order to determine whether it is used for “farm purposes” and is used on property owned by the same individual, or whether it is being improperly sold or used for other purposes. The potential for abuse of the exemption is significant, though I am certain it is not what the sponsor intended.

I appreciate the Committee’s consideration of these concerns, and appreciate also Representative Damron taking the time to consider my concerns when I communicated them to him.

Cordially,

A handwritten signature in blue ink that reads "Fitz".

Tom FitzGerald
Director

Cc: Rep. Damron