

405 KAR 10:025. Extension of performance bond subsidization.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.500 – 350.521

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.518(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. This administrative regulation establishes information related to the operation of the Kentucky Reclamation Guaranty Fund.

Section 1. Applicability. This administrative regulation shall apply only to an entity seeking to obtain by transfer the permit of a current member of the KRGF who was a member of the former Kentucky Voluntary Bond Pool.

Section 2. Performance Bond Subsidization. (1) Performance bond subsidization shall be extended to an applicant who was not a member of the former voluntary bond pool fund prior to its dissolution if the:

(a) Applicant intends to obtain its permit by transfer from a member of the former Kentucky Voluntary Bond Pool;

(b) Permit to which the applicant intends to succeed meets one (1) or more of the criteria for the cabinet to seek bond forfeiture under 405 KAR 10:050, Section 3;

(c) Applicant meets the requirements of this administrative regulation; and

(d) Commission determines it is in the best interest of the KRGF pursuant to KRS 350.509(1).

(2) If the commission determines the criteria for performance bond subsidization extension have been met, the bonds previously issued by the KRGF to the member of the former voluntary bond pool fund shall be substituted for bonds newly issued by the KRGF in accordance with the provisions of 405 KAR 10:015, Section 5.

(3) Subsequent to the extension of performance bond subsidization for the issuance of a successor permit pursuant to subsection (2) of this section, the KRGF may extend additional subsidization to the permittee for the permit to enable the permittee to complete mining and reclamation operations, if the commission determines it is in the best interest of the KRGF. The commission shall review an applicant's ability to meet the approval requirements of this administrative regulation upon application for additional subsidization.

(4) Only a permit with a bond previously covered by the former voluntary bond pool fund shall be eligible for performance bond subsidization. Other permits held by the applicant shall not be subsidized by the KRGF.

Section 3. Applicant Criteria. (1) Applicants for extension of performance bond subsidization shall submit an application on the Application for Performance Bond Subsidization for Permit Succession, RGF-4 form, which shall include:

(a) Identification of the permittee which the applicant wishes to succeed;

(b) Identification of permits the applicant intends to obtain by transfer;

(c) Information regarding the financial standing and compliance record of the applicant; and

(d) Any other information the commission needs to make a determination.

(2)(a) The commission shall consider applications on a case-by-case basis and meeting the criteria under this section shall not be grounds for automatic performance bond subsidization. An applicant shall be allowed thirty (30) calendar days after receipt of the commission's deter-

mination to contest the determination in writing.

(b) The written notice shall include:

1. An explanation of the nature of the contest; and
2. The documentation relied upon by the applicant.

(3) The applicant for extended performance bond subsidization shall be in good financial standing. The financial standing of the applicant shall be determined based upon the financial information required in the application and other information available to the KRGF and the cabinet. The commission shall consider the financial ratios of:

- (a) Current assets to current liabilities;
- (b) Net income to net sales;
- (c) Total liabilities to stockholders' equity;
- (d) Net income to owners' equity;
- (e) Owners' equity to total assets; and
- (f) The sum of cash, marketable securities, and net receivables, to current liabilities.

(4) The applicant for extended performance bond subsidization shall have held, under the same name or other name as provided in subsection (5) of this section, a permit issued by the cabinet to conduct surface mining operations in Kentucky or by an authorized agency governing surface mining operations in another state or territory, for a period of at least five (5) of the seven (7) years immediately preceding the application for extended performance bond subsidization, and have exhibited an approved compliance record as detailed by Section 4 of this administrative regulation.

(5) If the applicant cannot satisfy the requirements of subsection (4) of this section, then the following types of permits held by persons other than the applicant may be used to satisfy those requirements:

- (a) A permit issued to a person who owns fifty (50) percent or more of the applicant;
- (b) A permit issued to a person who is owned fifty (50) percent or more by a person meeting the requirements of subsection (4) of this section; or
- (c) A permit issued to a person whose combined ownership of the applicant is fifty (50) percent or more, provided each person meets the requirements set forth in subsection (4) of this section.

Section 4. Determination of Compliance Record. (1) An applicant shall be deemed to have an approved compliance record if the applicant, each person who owns or controls the applicant, each person who is owned or controlled by the applicant, and each person who is under common ownership and control with the applicant meet all of the criteria established in paragraphs (a) through (i) of this subsection. Each party established in this subsection shall have:

- (a) Never committed a violation for mining without having first obtained the required permit;
- (b) Never forfeited a bond or had a permit revoked;
- (c) Never avoided forfeiture of a bond because a surety performed reclamation work in order to avoid forfeiture;
- (d) Never been determined to have demonstrated a pattern of violations;
- (e) Not been issued more than one (1) order for cessation and immediate compliance for failure to complete required remedial measures in the most recent thirty-six (36) months of operation and the order was abated as ordered in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation;

(f) Not been issued more than one (1) order for cessation and immediate compliance for creating an imminent danger to the health and safety of the public or causing significant, imminent environmental harm in the most recent thirty-six (36) months of operation and the order

was abated as ordered in a timely manner;

(g) Not committed more than one (1) violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation in the most recent thirty-six (36) months of operation and the violation was abated in a timely manner, except the commission may by unanimous vote exclude violations that have been terminated with no civil penalty;

(h) Not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 or other applicable state or federal statute or regulation on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may by unanimous vote exclude violations that were timely abated and terminated with no civil penalty; and

(i) Not had civil penalties remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(2) To the extent the information is available, the commission shall take into account the performance of the applicant and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this section.

Section 5. Compliance Review for Continued Subsidization. (1) The commission shall review the compliance record of former applicants for extended bond subsidization.

(2) If the commission determines that the permittee no longer satisfies any of the criteria in Section 4(1) of this administrative regulation, it shall advise the cabinet that the permittee is no longer eligible for performance bond subsidization.

(3) Upon receipt of this notice, the cabinet shall immediately order the permittee to cease surface coal mining operations on that permit until it has obtained alternate bond coverage.

(4) During the period of cessation, the permittee shall maintain the permit in compliance with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 6. Permit Specific Bond. (1) For each permit obtained by transfer from a member of the former voluntary bond pool fund, a permit-specific bond at a rate of \$2,000 per acre shall be posted.

(2) Permit specific bonds posted pursuant to this section shall be released in accordance with the provisions of 405 KAR 10:015, Section 2.

Section 7. Incorporation by Reference. (1) "Application for Performance Bond Subsidization for Permit Succession", RGF-4, April 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, KY 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (41 Ky.R. 338; 1053; eff. 12-5-2014; TAm eff. 7-6-2016; Crt eff. 7-3-2018.)