

405 KAR 10:035. Procedures, criteria and hearing requirements for cancellation of surety bonds after notice of noncompliance issued for failure to maintain contemporaneous reclamation.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.068, 350.151, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part provides authority for the cabinet to approve the cancellation of surety bonds upon notice by the surety when a notice of noncompliance is issued for failure to maintain contemporaneous reclamation. This administrative regulation specifies the procedures and criteria for surety bond cancellation. This administrative regulation also sets forth certain notice and hearing requirements relating to surety bond cancellation.

Section 1. Procedures for Request for and Notice of Surety Bond Cancellation. (1) Notice of intent to cancel.

(a) After the issuance, on or after July 13, 1984, of a notice of noncompliance for failure to maintain contemporaneous reclamation, the surety obligated on the performance bond for the permit or any increment thereof may send notice to the insured and to the department, of its intent to request cancellation of bond coverage on any area disturbed after thirty (30) days from the effective date of the surety's notice of intent to cancel, if the violation is not abated.

(b) The notice of intent to cancel shall be sent by certified mail, return receipt requested, to the insured, and a copy to the Director of the Division of Field Services, of the department. The effective date of the notice of intent to cancel shall be the date on which it is received by the insured or seven (7) days after mailing of the notice by certified mail, return receipt requested, to the address contained on the permit application and any other address known to the insurer, whichever occurs first.

(c) The notice of intent to cancel shall be signed by an officer, director, or attorney-in-fact of the surety company and contain at a minimum the following:

1. Name of permittee;
2. Permit number and increment number, if applicable;
3. Name of surety;
4. Bond number and amount;
5. Date of issuance of notice of noncompliance and noncompliance number;
6. Date of notice of intent to cancel; and
7. A copy of a power-of-attorney, if applicable.

(2) Notice of cancellation.

(a) If the surety elects to cancel pursuant to its notice of intent to cancel, the surety shall send a notice of cancellation to the insured by certified mail, return receipt requested. A copy of said notice shall also be sent to the Director of the Division of Field Services by certified mail, return receipt requested.

(b) The notice of cancellation shall be on a form specified by the cabinet and shall be sworn to by an officer, director or attorney-in-fact of the surety, notarized and contain at a minimum the following:

1. Name of permittee and permit number;
2. Increment number, if applicable;
3. Name of surety and bond number;
4. Date of issuance of notice of noncompliance and noncompliance number;
5. Date the notice of intent to cancel was received by permittee;
6. Date of notice of cancellation;
7. A statement that the violation has not been abated within thirty (30) days of the effective date

of the notice of intent to cancel;

8. A statement that the surety acknowledges that it will not be relieved of its liability for areas disturbed prior to the department's approval of cancellation;

9. A request for the cabinet to approve the notice of cancellation; and

10. A copy of a power-of-attorney, if applicable.

(c) The notice of cancellation shall become effective upon the cabinet's approval.

(3) Cabinet approval of cancellation. Within thirty (30) days of receipt of the notice of cancellation, the cabinet shall approve the surety's notice of cancellation in writing, only if the following conditions exist:

(a) The violation has not been abated by the permittee; and

(b) The surety has complied with the notice requirements of subsection (1) and (2) of this section; and

(c) The cabinet has:

1. Revoked the permit by order of the commissioner of the department; or

2. Deleted the area subject to the cancellation by order of the commissioner of the department; or

3. Accepted and approved a substitute bond submitted by the permittee.

Section 2. Procedures for Permit Revocation or Deletion of the Areas Subject to Cancellation. The cabinet shall by order delete the areas subject to bond cancellation or revoke the permit for the entire permit area within thirty (30) days from receipt of the surety's notice of cancellation, without prior hearing, unless an acceptable substitute bond has been submitted to the cabinet.

(1) The order shall be issued by the commissioner of the department, without prior hearing, based upon information available to the cabinet and the surety's notice of cancellation.

(2) The permittee may request a hearing on the order of the commissioner pursuant to KRS 224.081(2).

(a) A hearing requested pursuant to KRS 224.081(2) shall be requested within thirty (30) days of entry of the order of the commissioner.

(b) The order of the commissioner shall be affirmed unless the permittee can affirmatively establish that bond coverage was not cancelled and the violation was abated at the time of entry of the commissioner's order, or that substitute bond was approved by the cabinet.

(c) Within thirty (30) days after entry of the order of the commissioner, the order may be rescinded if the permittee can demonstrate that a substitute bond has been accepted and approved by the cabinet and the violations have been abated.

Section 3. Procedures for Bond Release or Forfeiture After Approval of Cancellation. (1) The cabinet shall not release any portion of a bond for a permit area or increment thereof, including but not limited to undisturbed acreage, after cancellation, unless and until all disturbed areas on the permit or increment have been reclaimed to the standards set forth in KRS Chapter 350 and the administrative regulations promulgated pursuant thereto, or substitute bond has been filed and approved by the cabinet and the substitute surety has expressly assumed liability for all disturbed areas of the permit or increment.

(2) In the event of bond forfeiture the entire bond held by the cabinet shall be forfeited upon order of the secretary pursuant to KRS Chapter 350 and the administrative regulations pursuant thereto. (11 Ky.R. 331; 577; eff. 10-9-1984; Crt eff. 7-3-2018.)