

405 KAR 30:060. Form, terms and conditions of performance bonds and liability insurance.

RELATES TO: KRS 350.600

STATUTORY AUTHORITY: KRS 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.033 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth minimum bonding and insurance standards. The administrative regulation specifies the types, terms, and conditions of liability insurance.

Section 1. Types of Performance Bond. (1) The form for the performance bond shall be prescribed by the cabinet.

(2) The performance bond shall be either:

- (a) A surety bond;
- (b) A collateral bond; which includes cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States; or
- (c) A combination of these bonding methods as approved by the cabinet.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet.

(2) The performance bond shall be payable to the cabinet and not subject to cancellation by anyone until released by the cabinet.

(3) The performance bond shall be conditioned upon the faithful performance of all of the requirements of the applicable statutes and administrative regulations and the conditions of the reclamation plan and permit.

(4) The surety, by certified mail, will give prompt notice to the permittee and the cabinet of any notice received or action filed alleging any violations of state or federal regulatory requirements which could result in suspension or revocation of the surety's license to do business.

(a) In the event that the surety becomes unable to fulfill its obligations under the bond for any reason, written notice shall be given promptly to the permittee and the cabinet by certified mail.

(b) Upon the incapacity of a surety for any reason whatsoever, including but not limited to bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage. The cabinet shall issue a notice of noncompliance against any permittee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of 405 KAR and the permit.

(5) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet shall obtain possession of all collateral bonds which shall be kept in an appropriate account. Possession will be maintained until authorized for release or replacement.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet and the issuing bank in writing.

(c) The cabinet shall not accept an individual certificate of deposit for a denomination in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

(d) The cabinet shall require the issuer of the certificates of deposit to waive all rights of setoff or liens which it might have had against the certificates.

(e) The cabinet shall accept only those certificates of deposit that are automatically renewable.

(f) The cash value of any instrument pledged as collateral shall be at least equal to the bond amount.

(6) Letters of credit shall be subject to the following conditions:

(a) The letter of credit shall be irrevocable. Only a bank authorized to do business in the United States may issue a letter of credit.

(b) The letter of credit, by its express terms, must be payable in full to the cabinet upon receipt from the cabinet of a Notice of Forfeiture.

(c) The letter of credit shall provide that in the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice, by certified mail, shall be given immediately to the permittee and the cabinet.

Section 3. Substitution of Bonds. (1) Substitution of bonds shall be in the discretion of the cabinet.

(2) In effecting a requested substitution of bonds, the cabinet shall not release the existing prior performance bond until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds.

Section 4. Terms and Conditions for Liability Insurance. (1) The cabinet shall require the applicant to submit at the time of permit application, proof that the applicant has a public liability insurance policy in full force and effect for the oil shale operation for which the permit is sought. The public liability insurance policy shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of oil shale operations, including such injury or damage by use of explosives and injury or damage to water wells. Minimum insurance coverage for bodily injury shall be \$300,000 for each occurrence and \$500,000 aggregate; and minimum insurance coverage for property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

(2) The public liability insurance policy shall be maintained in full force during the term of the permit or any renewal thereof, and until completion of all reclamation operations under these oil shale administrative regulations.

(3) The policy shall include a clause requiring that the insurer notify the cabinet whenever any change whatsoever is made in the policy, including any termination of a policy or failure to renew the policy. (8 Ky.R. 94; 468; eff. 3-1-1982; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)