

405 KAR 30:070. Procedures, criteria and schedule for release of performance bond.

RELATES TO: KRS 350.600

STATUTORY AUTHORITY: KRS 151.125, 224.003, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 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 the procedures, criteria, and schedule for release of performance bonds.

Section 1. Procedures for Seeking Release of Performance Bond. (1) The permittee, or any person authorized in writing to act on his behalf, may file an application on a form provided by the cabinet for a release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a particular reclamation phase, as defined by these oil shale administrative regulations, has been completed on the entire permit area.

(a) Bond release applications will be considered at times or seasons that allow the cabinet to evaluate properly the reclamation operations alleged to have been completed.

(b) The application for bond release shall include copies of notices sent to the surface owners and adjoining property owners, notifying them of the permittee's intention to seek release of performance bonds. These notices shall be sent to the persons listed above before the permittee files the application for release with the cabinet.

(c) Within thirty (30) days after filing the application for release the permittee shall submit proof of publication of the advertisement required by subsection (2) of this section. Such proof of publication shall be considered part of the bond release application.

(2) At the time of filing an application under this section for a bond release, the permittee shall advertise pursuant to KRS 424.110 to 424.130. The advertisement shall:

(a) List the name of the permittee, including the number and date of issuance and/or renewal of the permit;

(b) Describe the precise location and the number of acres of the lands subject to the application;

(c) List the total amount of bond in effect for the permit area, the type of release sought, and the amount for which release is sought;

(d) Be filed with the cabinet and made a part of the complete permit application; and

(e) State that written comments, objections, and requests for a hearing pursuant to these oil shale administrative regulations must be submitted within thirty (30) days of the last publication date, provide the appropriate address of the cabinet, and the closing date by which comments, objections, and requests must be received.

(3) Written objections to the proposed bond release and requests for a hearing may be filed with the cabinet by any person having an interest which is or may be adversely affected by the proposed bond release. Such written objection must be filed within thirty (30) days of the date of the last advertisement of the filing for the bond release application.

(4) The cabinet shall inspect and evaluate the reclamation work allegedly performed by the permittee. Such inspection shall be completed within thirty (30) days after receiving a proper application for bond release, or as soon thereafter as weather conditions permit; provided however, that the bond release application is filed during a time or season that allows the cabinet to properly evaluate the reclamation operations.

(5)(a) If a hearing is held it shall be pursuant to KRS 224.083.

(b) The notice of the decision by the cabinet shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee, and all interested parties of their right to seek administrative or judicial review of the decision.

(6) Procedures for bond credit in cumulative bonding.

(a) Application. The permittee or any person authorized to act on his or her behalf may file an application with the cabinet to receive bond credit for completion of all reclamation, restorations, and abatement work in a reclamation phase on a sectional area approved under 405 KAR 30:035, Section 4, for cumulative bonding. Bond credit applications may only be filed at times or seasons that allow the cabinet to evaluate properly the reclamation operations alleged to have been completed. The application shall be of such form and content as the cabinet may require and shall include, but not be limited to:

1. The name of the permittee, the permit number, and the date of issuance or renewal of the permit;

2. The location, identification, and acreage of the section(s) for which credit is sought and the section(s) to which the credit is requested to be applied;

3. The total bond amount in effect for the entire permit area and the bond amounts originally calculated for the section(s) identified under subparagraph 2 of this paragraph, and any credits previously given for such section(s); and

4. A description of the reclamation, restoration, and abatement work completed on the section(s) for which credit is sought.

(b) Inspection and evaluation. The cabinet shall inspect and evaluate the reclamation work on the section(s) involved within thirty (30) days after receiving a completed application for bond credit, or as soon thereafter as weather conditions permit.

(c) Notice of decision. The cabinet shall, within thirty (30) days after its inspection and evaluation, notify the permittee of its decision to grant or deny the requested bond credit. The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the bond credit, and notify the permittee of his or her right to request within thirty (30) days of notice a public hearing.

(d) Hearing. In the event that a public hearing has been requested pursuant to paragraph (c) of this subsection, the cabinet shall inform the permittee of the time, date, and place of the hearing and publish notice of the hearing in the newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county in which the permit area is located once a week for two (2) consecutive weeks before the hearing. The hearing shall be held pursuant to 405 KAR 30:020, Section 8, within sixty (60) days of the cabinet's decision, in the locality of the permit area, or the central office of the cabinet in Frankfort, Kentucky, at the option of the permittee.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) There shall be no release of performance bonds until the permittee has met the requirements of the applicable reclamation phases as defined in subsection (4) of this section. The cabinet may release portions of the liability under performance bonds applicable to a permit or increment following completion of reclamation phases on the entire permit area or sections designated in the permit plan.

(2) There shall be three (3) phases of reclamation and release of performance bonds shall be calculated under the following percentages:

(a) Sixty (60) percent of the bond shall be released if reclamation phase one (1) is completed on the acreage; and

(b) An additional twenty-five (25) percent of the bond amount shall be released if reclamation phase two (2) is completed on the acreage; and

(c) The remaining fifteen (15) percent of the bond amount shall be released if reclamation phase three (3) is completed on the acreage.

(3) The cabinet shall not release any liability under performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the cabinet to complete the approved reclamation plan, achieve compliance

with the requirements of all applicable statutes and administrative regulations, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area. Where the permit includes an alternative postmining land use plan approved by the cabinet, the cabinet shall retain a sufficient amount of bond in order for the cabinet to complete any additional work which would be required to achieve compliance with the general standards for revegetation set forth in these oil shale administrative regulations in the event the permittee fails to implement the approved alternative postmining land use plan within the period of time required by these oil shale administrative regulations.

(4) For the purposes of this section:

(a) Reclamation phase one (1) shall be deemed to have been completed when the permittee completes backfilling, regrading, topsoil replacement, drainage control including soil preparation, seeding, planting and mulching in accordance with the approved reclamation plan, and a planting report for the area has been submitted to the cabinet; and

(b) Reclamation phase two (2) shall be deemed to have been completed when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. All water quality performance standards and parameters are met, drainage control is satisfactory to the cabinet, the affected area is not contributing suspended solids to stream flow, run-off outside the permit area is not in excess of the requirements of applicable laws and administrative regulations, and excess suspended solids are not contributed to stream flow or run off outside the permit area;

3. With respect to prime farmlands, soil productivity has been restored as required by these oil shale administrative regulations and the plan approved pursuant to the permit; and

4. The provisions of a plan approved by the cabinet for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the cabinet.

(c) Reclamation phase three (3) will be deemed to have been completed when the permittee has successfully completed all oil shale operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved by the cabinet, and the permittee has achieved compliance with the requirements of these oil shale administrative regulations and the applicable liability period. (8 Ky.R. 95; 469; eff. 3-1-1982; 9 Ky.R. 948; eff. 10-5-1983; TAm eff. 8-9-2007; Crt eff. 7-7-2018.)