

405 KAR 30:035. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.600

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

CERTIFICATION STATEMENT:

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 general requirements for performance bonds and liability insurance.

Section 1. Applicability. This administrative regulation sets forth the minimum requirements for filing and maintaining performance bonds and insurance for oil shale operations.

Section 2. Requirement to File a Bond.

(1) After an application for a new, revised or renewed permit to conduct oil shale operations has been approved but before such permit is issued, the applicant shall file with the cabinet a performance bond payable to the cabinet. A condition of the performance bond will be the faithful completion of all the requirements of the applicable statutes, the pertinent administrative regulations promulgated pursuant thereto, and the provisions of the reclamation plan and permit.

(2) The performance bond liability shall apply to all oil shale operations and related activities conducted within the permit area. Liability shall continue until requirements established by the cabinet have been met. After the amount of the bond has been determined for the permit area, the permittee or applicant shall file the performance bond in accordance with Section 4 of this administrative regulation.

Section 3. Requirement to File a Certificate of Liability Insurance. Each applicant shall file as a part of the permit application evidence that the applicant has obtained liability insurance.

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S" - single area bonding. A single area bond is a bond which covers the entire permit area as a single undivided area, for which the applicant must file the entire bond amount required by the cabinet prior to issuance of the permit. Liability under the bond shall extend to every part of the permit area at all times. There shall be no release of all or part of the bond amount for completion of a particular phase of reclamation on any part of the permit area under 405 KAR 30:070 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "C" - cumulative bonding. A cumulative bond is a bond which covers the entire permit area at all times, which may be filed by the permittee in partial bond amounts as operations progress through the permit area, with credit for successful reclamation on previously reclaimed sections of the permit area.

(a) For purposes of filing partial bond amounts, but not for purposes of bond release or bond forfeiture, the permit area shall be divided into sectional areas which shall be subject to approval by the cabinet. These sections shall be clearly identified on maps submitted in the permit application under 405 KAR 30:130 and the applicant shall describe the approximate time schedule for beginning operations in each section.

(b) Prior to issuance of the permit, the applicant shall file the partial bond amount which the cabinet determines is necessary for the first section of the permit area. The

partial bond amount filed for the initial section shall not be less than the minimum bond required for the permit area under 405 KAR 30:040.

(c) The permittee shall not engage in any oil shale operations on any section of the permit area unless and until the partial bond amount determined by the cabinet for that section has been filed with the cabinet. The permittee shall file with the cabinet the partial bond amount required for any section at least thirty (30) days prior to beginning operations in that section. In determining the partial bond amount required to be filed for any section of the permit area, the cabinet may allow credit for reclamation successfully completed on previously reclaimed sections of the permit area according to 405 KAR 30:070.

(d) The boundaries of sections for which the required partial bond amounts have been filed shall be physically marked at the site in a manner approved by the cabinet.

(e) Although the bond amount is filed with the cabinet in partial amounts as additional sections of the permit area are affected, liability under the bond extends at all times to the entire permit area, and the entire accumulated bond amount is applicable to the entire permit area. There shall be no release of bond for completion of a particular phase of reclamation on any part of the permit area until that phase of reclamation has been successfully completed on the entire permit area.

(3) Method "I" - incremental bonding. Incremental bonding is a method of bonding in which the permit area is divided into individual increments, each of which is bonded separately and independently, and for which bond is filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments which shall be subject to approval by the cabinet. Where the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area must be contained within a single increment. These increments shall be clearly identified on maps submitted in the permit application under 405 KAR 30:130, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment of the permit area, which shall be not less than the minimum bond required for the permit area required under 405 KAR 30:040.

(c) The permittee shall not engage in any oil shale operations on any increment of the permit area unless and until the full bond amount required by the cabinet has been filed for that increment. The full bond amount required for any increment shall be filed with the cabinet at least thirty (30) days prior to beginning operations in that increment. No credit shall be given for reclamation on other increments.

(d) The boundaries of each increment for which bond has been filed shall be physically marked at the site in a manner approved by the cabinet.

(e) The bond amount for an increment shall be released or forfeited independently of any other increment of the permit area, and liability under the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) There shall be no release of bond for completion of a phase of reclamation on any part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) When the bond for an increment is completely released under 405 KAR 30:070, the increment shall be deleted from the permit area.

(405 KAR 030:035. 8 Ky.R. 574; 1412; eff. 6-25-1982; TAm eff. 8-9-2007; Crt eff. 7-3-2018; Crt eff. 6-30-2025.)

