

805 KAR 1:220. Public liability insurance and self-insurers.

RELATES TO: KRS Chapter 13B, 349.040

STATUTORY AUTHORITY: KRS 349.040, 349.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 requires the Department for Natural Resources to promulgate administrative regulations necessary to implement KRS Chapter 349. KRS 349.040(3)(e) requires applicants to maintain public liability coverage or be self-insured, and requires the department to establish requirements for self-insurers. This administrative regulation establishes minimum requirements for public liability insurance and for public liability self-insurers.

Section 1. Definitions.

(1) "Commissioner" is defined by KRS 349.010(6).

(2) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(3) "Public liability insurance" means insurance to protect against loss or liability by reason of personal injuries to persons other than employees and damage to property owned by third parties.

(4) "Service organization" means a person or entity which provides services including claims adjustment, safety engineering, computation of statistics, preparation of loss or tax reports, purchase of excess insurance, or preparation of any required self-insurance report.

(5) "Specific excess insurance" means an insurance policy, which insures the amount of a claim from one (1) occurrence involving one (1) or more claimants in the same occurrence or incident of exposure in excess of a specified dollar amount.

Section 2. Terms and Conditions for Liability Insurance.

(1) The applicant shall submit, as part of the permit application or maintain on file with the division, a certificate issued by an insurance company authorized to do business in Kentucky certifying that the applicant has a public liability insurance policy in force for the coal bed methane well and reclamation operation for which the permit is sought. The certification shall be on a Form CBM-16 as prescribed by the department. The public liability insurance policy shall provide for bodily injury and property damage coverage for all persons injured or property damaged as a result of coal bed methane well operations, including damage to water wells. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate, in accordance with KRS 349.040(3)(e).

(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 coal bed methane well administrative regulations, 805 KAR Chapter 9.

(3) The policy shall include a clause requiring that the insurer notify the department if any change whatsoever is made in the policy, including any termination of a policy or failure to renew the policy.

(4) The public liability insurance policy shall not contain a deductible to be paid by the applicant if there is a claim.

Section 3. Certification for Self-Insurers. A person shall not act as or hold itself out as an approved self-insurer unless approved by the department, in accordance with Section 5 of this administrative regulation. A certification issued by the department shall remain in effect on an annual basis, unless otherwise revoked pursuant to Section 11 of this administrative regulation. The department may prescribe additional security based upon the type, volume, and nature of risk being self-insured.

Section 4. Application for Certification of Self-Insurers.

(1) An initial application for approval as a self-insurer shall be submitted to the Department on Form CBM-12 and shall include:

(a) The self-insurer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. A subsidiary which is to be covered under the application, or who is already an approved self-insurer, shall be identified with the relationship to the applicant described fully;

(b) A statement of the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of drilling units at each site;

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance shall be received by the department at least five (5) days prior to certification of self-insurance;

(d) A copy of the proposed surety deposit or letter of credit instrument required by Section 5 of this administrative regulation. The surety shall be received by the department prior to certification to self-insure;

(e) A schedule of projected three (3) years claimant liabilities;

(f) Annual claims payment requirements for the five (5) years preceding the application;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation or a limited liability corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on Form CBM-13;

(j) An individual or service organization responsible for administration or adjustment of a claim shall provide satisfactory evidence to the department as to the organization's qualifications to administer and adjust public liability claims; and

(k) If a service organization is used, a statement from the service organization and self-insurer stating that the contract between the two (2) parties meets the requirements set forth in subsection (4) of this section.

(2) An applicant may perform, if qualified, a function of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents shall be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than ninety (90) days prior to the proposed inception date of self-insurance. Upon receipt of a complete application and all required documents, the department shall approve or reject status as a self-insurer within ninety (90) days.

(4) A contract with a service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the department finding the self-insurer in default unless a substitute service organization has been procured.

(5) Variation from the requirements of this section, if an applicant is unable to meet all requirements, may be sought by application to the department. The department may

prescribe additional security based upon the type, volume, and nature of risk being self-insured.

Section 5. Approval of Self Insurer Certification.

(1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the department shall consider all relevant factors including the following:

- (a) The financial strength of the applicant or guarantor;
- (b) The excess insurance policy and retention level;
- (c) The experience of the service organization;
- (d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;
- (e) Profit and loss history;
- (f) Five (5) year liability loss history of the applicant;
- (g) The prospect of increased losses by the self-insurer's bankruptcy or cessation of operations in Kentucky;
- (h) The number of drilling units and degree of hazard to which the public is exposed; and
- (i) Safety programs.

(2) In order to be certified as a self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$3,000,000. Variance from this requirement may be granted to a currently certified individual self-insurer who has demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted if the department finds that:

- (a) The applicant has complied with all sections of this administrative regulation; and
- (b) Persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of self-insurance liabilities and claims.

Section 6. Specific Excess Insurance and Surety Requirements.

(1) The department may require that specific excess insurance be purchased with a coverage limit of at least \$300,000 per occurrence and \$500,000 aggregate, with no deductible to be paid by the insured if there is a claim. The department may also require that aggregate excess insurance be purchased, with no deductible to be paid by the self-insured if there is a claim. In fixing the amount of aggregate coverage that must be purchased, the department shall consider all relevant factors including liability associated with anticipated claims.

(2) To be eligible to write specific excess insurance for a self-insurer in Kentucky, a casualty insurance company on its latest annual statutory financial statement filed with the department shall reflect a minimum policyholder surplus of not less than \$25,000,000. The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

(3) Each applicant who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide primary security in the form of a continuous surety bond on Form CBM-14 or by irrevocable letter of credit on Form CBM-15, in an amount specified by the department, but not less than \$500,000. In fixing the amount of security, the department shall consider all relevant factors including liability associated with anticipated claims.

(4) In lieu of a bond with security or letter of credit, the self-insurer may deposit cash in an amount specified by the department, but not less than \$500,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies, as provided in KRS Chapter 304, Subtitle 7.

Section 7. Coverage of Subsidiary or Related Corporations. A corporation having a wholly-owned subsidiary may submit one (1) joint application to the department, if the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) days written notice to the department.

Section 8. Examination and Review of Filings. A certified public accountant or actuary may be employed by the department for the purpose of reviewing and analyzing the annual filings of individual self-insurers, and applicants for self-insurance, and for making recommendations based on that review.

Section 9. Cessation Liability Security.

- (1) Cessation liability security shall be distinct from the primary security required in Section 6 of this administrative regulation.
- (2) Upon cessation of all operations of a self-insurer in the Commonwealth of Kentucky, cessation liability security shall be called for payment of a claim after all other security posted by the self-insurer has been exhausted.
- (3) Cessation liability security shall be issued in one (1) or more of the following forms:
 - (a) A surety bond or insurance policy issued by a casualty insurance company qualified pursuant to Section 6 of this administrative regulation;
 - (b) An escrow account; or
 - (c) An irrevocable letter of credit.
- (4) If a self-insurer secures its liability obligations by obtaining standard insurance "tail" coverage, the department may release the cessation liability security, effective as of the date acquiring other coverage.

Section 10. Annual filings.

- (1) A self-insurer shall file with the department on or before 120 days from the end of the self-insurer's fiscal year:
 - (a) The statement of financial condition, including balance sheet, income statement, cash flow statement, and narrative summary of current year operations;
 - (b) Total claims, both reported and incurred but not reported, for the prior fiscal year, the projected total claims for the next year by quarter, and other reasonable information requested by the department, including relevant claim data; and
 - (c) If a service organization is used, a statement from the service organization and self-insurer stating that the contract between the two (2) parties meets the requirement set forth in Section 4(4) of this administrative regulation.
- (2) At least ten (10) days prior to the end of each fiscal year, the self-insurer shall file proof of specific excess insurance and aggregate excess insurance for the following year with the department, if required.
- (3) If the annual required filings are not timely made, the self-insurance certificate shall not be renewed.

Section 11. Change in Ownership; Subsidiaries; Mergers and Acquisitions.

- (1) If there is a change in majority ownership of a parent company, the self-insurer shall notify the department within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.
- (2) If another entity is added, merged, acquired, or otherwise brought within the self-insurance coverage, the self-insurer shall notify the department within thirty (30) days, and the adequacy of the surety bond shall be reviewed and shall be increased accordingly.

(3) If the claim liabilities of the self-insurer during a quarter exceeds 150 percent of the projection previously filed, the self-insurer shall immediately report that change to the department, and the adequacy of the surety bond requirements shall be reviewed and the bond shall be increased accordingly.

Section 12. Revocation or Modification of Certification.

(1) If the department receives information furnishing reasonable grounds to believe that the self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 349 or this administrative regulation, a show cause order shall be issued to the self-insurer detailing the purported deficiency and setting a time and place for hearing, pursuant to KRS Chapter 13B.

(2) The department may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The self-insurer is operating in:

1. Contravention of its submitted application; or
2. In material violation of this administrative regulation;

(b) The self-insurer or parental guarantor no longer has the financial stability to assure its ability to meet its obligations for the payment of liabilities and claims;

(c) The self-insurer has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity, if requested by the department; or

(d) The self-insurer has failed to respond or appear before the department.

(3) Self-insurance certification may be revoked by the department after issuance of a show cause order setting forth the grounds of revocation and an opportunity for a hearing, pursuant to KRS Chapter 13B. The hearing shall be conducted pursuant to Section 14 of this administrative regulation. During the pendency of a hearing or appeal, the department may utilize the surety deposit provided by the self-insurer to make a payment of actual claims which are currently due for which a payment is not being made by the self-insurer or its service organization.

Section 13. Notice of Cancellation of Excess Coverage.

(1) Insurance carriers shall notify the department at least sixty (60) days prior to cancellation or nonrenewal of excess insurance or aggregate excess insurance for any self-insurer required to maintain insurance.

(2) If the insurance carrier fails to notify the department pursuant to this section, the cancellation or nonrenewal shall be deemed void from the beginning and coverage shall remain in force and effect.

Section 14. Aggrieved Parties.

(1) A person aggrieved by an action of the department may request a hearing by filing a written request with the department setting forth the basis. Upon receipt of a request, the department shall issue a notice of hearing to be held pursuant to KRS Chapter 13B.

(2) Hearing shall be conducted pursuant to KRS Chapter 13B. The department's final order may revoke or modify a self-insurance certification or allow a self-insurer to continue to self-insure subject to certain terms and conditions.

(3) The final order of the department may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 15. Role of the Office of Insurance. The department may seek advice and recommendations from the Office of Insurance concerning the filing and analysis of submissions and data related to an insured or self-insured entity's compliance with insurance or self-insurance regulatory requirements. Any Memorandum of Understanding entered between the department and the Office of Insurance shall limit the Office of Insurance to an advisory role, only. The approval of insurance certifications, applications for self-insurance, and all other compliance decisions shall remain with the department.

Section 16. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) "Coal Bed Methane Operator's Application for Approval to Self-Insure," Form CBM-12, Jan. 2005;
- (b) "Self-Insurers' Guarantee Agreement," Form CBM-13, Jan. 2005;
- (c) "Continuous Bond and Surety Rider," Form CBM-14, Jan. 2005;
- (d) "Irrevocable Letter of Credit," Form CBM-15, Jan. 2005; and
- (e) "Certificate of Liability Insurance," Form CBM-16, Jan. 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural Resources, Division of Oil and Gas Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(31 Ky.R. 1478; 1969; eff. 6-8-2005; TAm eff. 7-6-2016; Crt eff. 6-27-2018; Recodified from 805 KAR 009:100; eff. 7-10-2019.)