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Donna Little
REGULATIONS COMPILER

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

(New Administrative Regulation)

405 KAR 10:015. General bonding provisions.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the Cabinet to promulgate administrative regulations to establish procedures for determining amounts for performance bonds for surface coal mining operations. This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds must remain in effect. This administrative regulation establishes requirements for filing and maintaining performance bonds, and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work must be performed by the Cabinet, taking into consideration such things as topography, geology, future land use and the difficulty of reclamation.

1 Section 1. Bonding Requirements. (1) An applicant shall not disturb surface acreage or
2 extend any underground shafts, tunnels, or operations prior to receipt of approval from the cabinet
3 of a performance bond covering areas to be affected by surface operations and facilities.
4 (2) After an application for a new, amended, revised or renewed permit to conduct surface
5 coal mining and reclamation operations has been approved under 405 KAR Chapter 8, but before
6 the permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by
7 the cabinet, a performance bond payable to the cabinet. The applicant shall file the "Performance
8 Bond, Form SME-42 (June 1999)" for operations on lands other than federal lands, or the
9 "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F,
10 (June, 1999)" for operations on federal lands. The performance bond shall be conditioned upon the
11 faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24,
12 and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and
13 reclamation operations to be conducted within the permit area or increment thereof until all
14 reclamation requirements of 405 KAR Chapters 7 through 24 have been met. The amount,
15 duration, type, conditions and terms of the performance bond shall conform to the requirements of
16 this administrative regulation.
17 (3) No permit shall be revised or amended to include additional area unless the liability of
18 the current bond is extended to cover the entire permit area or increment as revised or amended,
19 and the liability of the supplemental bond covers the entire permit area as revised or amended.
20 Unless these conditions are met with respect to the bond, the additional area shall be permitted as a
21 separate increment of the current permit area or under a new permit.

1 (4) A rider to the applicable performance bond, confirming coverage of the revision, shall
2 be submitted by the applicant if a revision to a permit does not change the acreage of the permit
3 area or increment but:
4 (a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste
5 impoundment to the existing permit; or
6 (b) Alters the boundary of a permit area or increment.
7 Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be
8 in an amount determined by the cabinet as provided in Sections 6, 7, and 8 of this administrative
9 regulation.
10 (2) The performance bond shall be payable to the cabinet.
11 (3) The performance bond shall be conditioned upon faithful performance of all of the
12 requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the conditions of the
13 permit and shall cover the entire permit area or such incremental area as the cabinet has approved
14 pursuant to Section 4(2) of this administrative regulation.
15 (4) The duration of the bond shall be for a time period provided in Section 9 of this
16 administrative regulation.
17 (5) Surety bonds shall be subject to the following conditions:
18 (a) The cabinet shall not accept the bond of a surety company unless the bond shall not be
19 cancelable by the surety at any time for any reason including, but not limited to, nonpayment of
20 premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for
21 permitted lands not disturbed may be cancelled with the written approval of the cabinet, provided
22 the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to
23 the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective

1 for lands subject to bond coverage which are affected after receipt of notice, but prior to approval
2 by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been
3 filed by the permittee, or if the permit area has been reduced by revision to the extent that the
4 remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the
5 completion of reclamation operations on the reduced permit area in accordance with Section 10 of
6 this administrative regulation. The cabinet shall advise the surety, within thirty (30) days after
7 receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.
8 (b) The bond shall provide that the surety and the permittee shall be jointly and severally
9 liable.
10 (c)1. The surety shall give prompt notice to the permittee and the cabinet of any notice
11 received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any
12 violations of regulatory requirements which could result in suspension or revocation of the surety's
13 license to do business.
14 2. In the event the surety becomes unable to fulfill its obligations under the bond for any
15 reason the surety shall promptly provide written notice to the permittee and the cabinet.
16 3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or
17 revocation of its license or certificate of authority, the permittee shall be deemed to be without
18 proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve
19 the permittee of responsibility under the permit or the surety of liability on its bond. The cabinet
20 shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to
21 exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the
22 permittee shall cease coal extraction and coal processing operations and shall comply with the
23 provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately

1 begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction
2 and coal processing operations shall not resume until the cabinet has determined that an acceptable
3 bond has been posted. If an acceptable bond has not been posted by the end of the period allowed,
4 the cabinet may suspend the permit until acceptable bond is posted.

5 (d) A surety bond shall be executed by the operator and a corporate surety licensed to do
6 business in the Commonwealth of Kentucky.

7 (6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and
8 letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following
9 conditions:

10 (a) The cabinet or its authorized agent shall obtain possession of and keep in custody all
11 collateral deposited by the applicant, until authorized for release or replacement as provided in this
12 chapter.

13 (b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its
14 authorized agent in writing, through the submittal of Escrow Agreement Form SME-64, (July
15 2000),and the assignment evidenced on the books of the bank issuing such certificates.

16 (c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a
17 FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept a
18 denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

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

21 (e) Persons with an interest in collateral posted as a bond, and who desire notification of
22 actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the
23 collateral is offered.

1 (f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of
2 deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity,
3 upon forfeiture, for the amount of the bond required by this chapter.
4 (7) Letters of credit shall be subject to the following conditions:
5 (a) The letter may only be issued by a bank organized or authorized to do business in the
6 United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed
7 by an approved Kentucky lending institution.
8 (b) Letters of credit shall be irrevocable.
9 (c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a
10 notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to
11 terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable
12 Standby Letter of Credit, Form SME-72 (July 1994) and the Confirmation of Irrevocable Letter of
13 Credit, For SME-72-A, (July 1994) shall be submitted to the cabinet, as necessary.
14 (d)1. The issuer shall give prompt notice to the permittee and the cabinet of any notice
15 received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any
16 violations of regulatory requirements which could result in suspension or revocation of the issuer's
17 charter or license to do business;
18 2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit
19 for any reason, notice shall be given immediately to the permittee and the cabinet;
20 3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or
21 revocation of its charter or license, the permittee shall be deemed to be without proper performance
22 bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the
23 permittee of responsibility under the permit or the issuer of liability on the letter of credit. The

1 cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond
2 coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period
3 allowed, the permittee shall cease coal extraction and coal processing operations and shall comply
4 with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall
5 immediately begin to conduct reclamation operations in accordance with the reclamation plan.
6 Coal extraction and coal processing operations shall not resume until the cabinet has determined
7 that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of
8 the period allowed, the cabinet may suspend the permit until acceptable bond is posted.
9 (8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or
10 increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to
11 by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced
12 under 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no
13 schedule is submitted, the cabinet may release equal percentages of each bond.
14 Section 3. Types of Performance Bond. (1) The cabinet shall approve performance bonds
15 of only those types which are set forth in this section.
16 (2) The performance bond shall be either:
17 (a) A surety bond;
18 (b) A collateral bond;
19 (c) A combination of the above bonding types; or
20 (d) Bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR
21 10:200, KRS 350.595, and 350.700 through 350.755).

1 Section 4. Bonding Methods. The method of performance bonding for a permit area shall
2 be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall
3 consist of one (1) of the following methods:
4 (1) Method "S" - single area bonding. A single area bond is a bond which covers the entire
5 permit area as a single undivided area, for which the applicant shall file the entire bond amount
6 required by the cabinet prior to issuance of the permit. Liability under the bond shall extend to
7 every part of the permit area at all times. Except as provided in Section 9(2) of this administrative
8 regulation regarding extended bond liability, there shall be no release of all or part of the bond
9 amount for completion of a particular phase of reclamation on any part of the permit area under
10 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire
11 permit area.
12 (2) Method "I" - incremental bonding. Incremental bonding is a method of bonding in
13 which the permit area is divided into individual increments, each of which is bonded separately and
14 independently, and for which bond is filed as operations proceed through the permit area.
15 (a) The permit area shall be divided into distinct increments which shall be subject to
16 approval by the cabinet. Each increment shall be of sufficient size and configuration to provide for
17 efficient reclamation operations should reclamation operations by the cabinet become necessary. If
18 the approved postmining land use is of such nature that successful implementation of the
19 postmining land use capability depends upon an area being integrally reclaimed, then that area
20 shall be contained within a single increment. These increments shall be clearly identified on maps
21 submitted in the permit application under 405 KAR Chapter 8, and the applicant shall describe the
22 approximate time schedule for beginning operations in each increment.

1 (b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond
2 amount required by the cabinet for the first increment or increments of the permit area to be
3 disturbed, which shall be not less than the minimum bond required for the permit area required
4 under Section 7 of this administrative regulation.

5 (c) The permittee shall not engage in any surface coal mining and reclamation operations
6 on any increment of the permit area unless the full bond amount required by the cabinet has been
7 filed with the appropriate regional office of the department for that increment, the cabinet has
8 verified the validity of the bond, and written authorization to conduct surface coal mining and
9 reclamation operations on that increment is issued by the administrator of the regional office. No
10 credit shall be given for reclamation on other increments.

11 (d) The boundaries of each increment shall be physically marked at the site in a manner
12 approved by the cabinet.

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

18 (f) Except as provided in Section 9(2) of this administrative regulation regarding extended
19 bond liability, there shall be no release of bond for completion of a phase of reclamation on any
20 part of an increment until that phase of reclamation has been successfully completed on the entire
21 increment.

22 (g) When the bond for an increment is completely released under 405 KAR 10:040, the
23 increment shall be deleted from the permit area.

1 Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute
2 existing surety or collateral bonds for equivalent surety or collateral bonds, if the liability which
3 has accrued against the permittee on the permit area or increment is transferred to such substitute
4 bonds.

5 (2) The cabinet shall not release existing performance bonds until the permittee has
6 submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of
7 performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR
8 10:040.

9 (3) The cabinet may refuse to allow substitution of bonds if an action for revocation or
10 suspension of the permit covered by the bond is pending or if there is a pending action for
11 forfeiture of the bond.

12 Section 6. Determination of Bond Amounts. (1) In determining the bond amount the
13 cabinet shall estimate the cost to the cabinet if it had to perform the reclamation, restoration and
14 abatement work required of a person who conducts surface coal mining and reclamation operations
15 under KRS Chapter 350, 405 KAR Chapters 7 through 24 and the permit. This amount shall be
16 based on:

17 (a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030,
18 Section 24(4) and 405 KAR 8:040, Section 24(4);

19 (b) The additional estimated costs to the cabinet which may arise from applicable
20 public contracting requirements or the need to bring personnel and equipment to the permit area
21 after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

22 (c) All additional estimated costs necessary, expedient, and incident to the satisfactory
23 completion of the requirements identified in this section;

1 (d) An additional amount based on factors of cost changes during the previous five (5)
2 years for the types of activities associated with the reclamation to be performed; and
3 (e) Such other cost information as may be required by or available to the cabinet.
4 (2) If the reclamation cost calculated submitted in a permit application is higher than the
5 minimum bond or bond calculated by the cabinet, the higher calculation will be used in an issued
6 permit.
7 (3) The cabinet shall review the bonding amounts identified in Sections 7 and 8 of this
8 administrative regulation at a minimum of every two (2) years to determine if the amounts are
9 adequate due to inflation and increases in reclamation costs.
10 Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal
11 mining and reclamation operations at the time the permit is issued or amended shall be:
12 (1) $75,000 for the entire surface area under one (1) permit;
13 (2) $75,000 per increment for incrementally bonded permits, subject to Section 4(2) of this
14 administrative regulation;
15 (3) $50,000 for a permit or increment operating on previously mined areas, as defined in
16 Section 1(86) of 405 KAR 8:001, to be evaluated by the cabinet; or
17 (4) $10,000 for underground mines that have only underground operations.
18 Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and
19 reclamation operation shall be bonded at the following rates for any permit issued by the Division
20 of Mine Permits:
21 (1) Coal haul roads, other mine access roads, and mine management areas shall be bonded
22 at $2,500 per acre and each fraction thereof.

1 (2) Refuse disposal areas shall be bonded at a minimum rate of $7,500 per acre and each
2 fraction thereof.
3 (3) An embankment sediment control pond shall be bonded at a rate of $10,000 per acre
4 and each fraction thereof, with each pond being measured separately, if the pond is:
5 (a) Located off-bench; and
6 (b) Located downstream and outside the proposed mining or spoil storage area.
7 (c) This rate may be applied to partial embankment structures as deemed necessary by the
8 cabinet to meet the requirements of Section 6(1) of this administrative regulation.
9 (4) Coal preparation plants shall be bonded at the base acreage rate, discussed in paragraph
10 (6) of this Section, in addition to the costs associated with demolition and disposal costs relating to
11 concrete, masonry, steel, timber, and other materials associated with surface coal mining and
12 reclamation operations.
13 (5) Operations on previously mined areas, as defined in Section 1(86) of 405 KAR 8:001,
14 shall be bonded at rate of $2,000 per acre and each fraction thereof.
15 (6) All areas of surface coal mining and reclamation operations not otherwise addressed in
16 paragraphs (1) through (5) of this section shall be bonded at the rate of $3,500 per acre and each
17 fraction thereof.
18 (7) (a) For permits that have been identified as a producer of long-term treatment drainage,
19 the cabinet shall calculate an additional bond amount based on the estimated annual treatment cost,
20 provided by the permittee and verified by the cabinet, multiplied by twenty years.
21 (b) The cost estimate is subject to verification and acceptance by the cabinet. The
22 department shall use its own estimate for annual treatment costs if the department cannot verify the
23 accuracy of the permittee's estimate.

1 (c) In lieu of this calculation, the permittee may submit a remediation plan to be approved
2 by the cabinet for the areas deemed to be producing substandard drainage. The remediation plan
3 shall demonstrate that substandard discharge will be permanently abated by land reclamation
4 techniques prior to phase II bond release. If department rejects the plan, the permittee shall submit
5 the additional acid mine drainage bond previously described in this section.

6 Section 9. Period of Liability. (1) Liability under performance bond [~~bond(s)~~] applicable to
7 an entire permit area or increment thereof shall continue until all reclamation, restoration and
8 abatement work required of persons who conduct surface coal mining and reclamation operations
9 under requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the provisions of
10 the permit have been completed, and the permit or increment terminated by release of the permittee
11 from any further liability in accordance with 405 KAR 10:040.

12 (2) In addition to the period necessary to achieve compliance with all requirements of KRS
13 Chapter 350, 405 KAR Chapters 7 through 24 and the permit including the standards for the
14 success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of
15 liability under a performance bond shall continue for a period of five (5) years beginning with the
16 last year of augmented seeding, fertilizing, irrigation or other work. The period of liability shall
17 begin again whenever augmented seeding, fertilizing, irrigation or other work is required or
18 conducted on the site prior to bond release. Isolated and clearly defined portions of a bonded area
19 requiring extended liability because of augmentation may be separated from the original area and
20 bonded separately upon approval by the cabinet. Such areas shall be limited in extent, and not
21 constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas
22 for remedial work may be included in the area under extended liability if deemed necessary by the
23 cabinet.

1 (3) If the cabinet approves a long-term intensive agricultural postmining land use in
2 accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation or other husbandry
3 practices normally associated with the approved postmining land use shall not require restarting the
4 five (5) year period of liability.

5 (4) The bond liability of the permittee shall include only those actions which the permittee
6 is required to take under the permit, including completion of the reclamation plan in such a manner
7 that the land will be capable of supporting a postmining land use approved under 405 KAR 16:210.
8 Actions of third parties which are beyond the control and influence of the permittee and for which
9 the permittee is not responsible under the permit shall not be covered by the bond.

10 Section 10. Adjustment of Amount. (1) The amount of the performance bond liability
11 applicable to a permit or increment shall be adjusted by the cabinet:

12 (a) When the acreage in the permit area or increment is either increased or decreased; or

13 (b) When the cabinet determines that the cost of future reclamation, restoration or
14 abatement work has changed. When it is determined that an adjustment under this paragraph is
15 necessary, the cabinet shall:

16 1. Notify the permittee, the surety, and any person with a property interest in collateral who
17 has previously requested such notification in writing; and

18 2. Provide the permittee an opportunity for an informal conference on the adjustment. The
19 requirements of 405 KAR 7:091 and 405 KAR 7:092 shall not apply to the conduct of the
20 conference.

21 (2) The amount of the performance bond liability applicable to a permit or increment may
22 be adjusted by the cabinet upon application by the permittee under 405 KAR 8:010, Section 20 to
23 delete acreage from the permit area or increment thereof where such acreage has not been affected

1 by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section
2 2(3) shall apply. However, a reduction due to such deletion of acreage shall not constitute a bond
3 release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

4 (3) The cabinet may grant reduction of the required performance bond amount if the
5 permittee's method of operation or other circumstances will reduce the maximum estimated cost to
6 the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the
7 bond amount. The request shall not be considered as a request for partial bond release subject to
8 the procedures of 405 KAR 10:040, Section 1.

9 (4) The cabinet shall refuse to approve any reduction of the performance bond liability
10 amount if an action for revocation or suspension of the permit covered by the bond is pending, if
11 there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of
12 405 KAR Chapters 7 through 24 on that permit or increment.

13 Section 11. Supplemental Assurance. (1) If alternative distance limits or additional pits are
14 approved under 405 KAR 16:020 Section 2, the applicant shall submit to the cabinet supplemental
15 assurance in the amount set forth in this section. This supplemental assurance shall be for the
16 purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in
17 addition to the performance bond required under 405 KAR Chapter 10. The applicant shall submit
18 supplemental assurance on the cabinet form, "Supplemental Assurance, SME-42 (SA)", (July,
19 1994). This form shall be accompanied by the Escrow Agreement form (for use with Supplemental
20 Assurance form only), SME-64 (SA), (July, 1994).

21 (a) The supplemental assurance shall not be subject to the bond release requirements of 405
22 KAR 10:040, but shall be returned in accordance with the requirements of this section.

1 (b) However, the requirements of Sections 2, 3, and 5 of this administrative regulation, 405
2 KAR 10:035, and 405 KAR 10:050 shall apply to supplemental assurance.
3 (2) Single seam contour mining. For single seam contour operations subject to Section 2(3)
4 of 405 KAR 16:020 the amount required shall be $150,000 per 1500 feet, or any portion thereof, of
5 additional distance approved for the first pit under Section 2(3) of 405 KAR 16:020. If an
6 additional pit or pits are approved, the amount shall be $150,000 per 1500 feet, or any portion
7 thereof, including the first 1500 feet of each additional pit.
8 (3) Multiple seam contour mining. For multiple seam contour mining operations subject to
9 Section 2(4) of 405 KAR 16:020, the amount required shall be $150,000 per 1500 feet, or any
10 portion thereof, of additional distance approved for the first multiple seam operation under Section
11 2(4) of 405 KAR 16:020. If any additional multiple seam operations are approved, the amount
12 shall be $150,000 per 1500 feet, or any portion thereof, including the first 1500 feet of each
13 additional multiple seam operation.
14 (4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour
15 cut around all or a portion of the mountaintop, that contour portion shall require the same
16 supplemental assurance set forth in subsection (2) of this section.
17 (5) Area mining. The amount required shall be $150,000 for any four (4) spoil ridges, or
18 any portion thereof, of additional distance approved for the first pit under Section 2(1) of 405 KAR
19 16:020. If an additional pit or pits are approved, the amount shall be $150,000 for any four (4)
20 spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.
21 (6) Return of supplemental assurance. Supplemental assurance shall be returned to the
22 person that submitted it upon:
23 (a) Application to the cabinet for the return; and

1 (b) Inspection and written documentation (including photographs) by the cabinet verifying
2 that the area for which the supplemental assurance was submitted has been backfilled and graded
3 (or in the case of mountaintop removal, the associated highwall has been eliminated by mining
4 operations).
5 Section 12. Incorporation by Reference. (1) The following material is incorporated by
6 reference:
7 (a) "Performance Bond, Form SME-42, (June, 1999)";
8 (b) "Irrevocable Standby Letter of Credit, Form SME-72, (July, 1994)";
9 (c) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A, (July, 1994)";
10 (d) "Supplemental Assurance, SME-42 (SA), (July, 1994)";
11 (e) "Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA),
12 (July, 1994)";
13 (f) "Escrow Agreement, Form SME-64, (October, 2008)";
14 (g) "Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154,
15 (May, 2012)"; and
16 (h) "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form
17 SME-42-F, (June, 1999)".
18 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
19 law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky
20 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

405 KAR 10:015 approved for filing.
Pages (1-17)

5/4/12

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing June 14, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator
#2 Hudson Hollow
Frankfort, KY 40601
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Email: Michael.Mullins@ky.gov

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 10:015
Contact Person: Michael Mullins, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds shall remain in effect. This administrative regulation also establishes requirements for filing and maintaining performance bonds, and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work must be performed by the Cabinet, taking into consideration such things as topography, geology, future land use and the difficulty of reclamation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide essential information on bonding mine sites in the event work must be performed by the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.064 requires an applicant to file with the cabinet a reclamation bond for performance payable, as appropriate, to the state, and conditional upon faithful performance of all the requirements of this chapter and the permit. This administrative regulation provides essential details for this process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the procedures for bonding and supplemental assurance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all surface coal mine permit holders. There are approximately 1844 total permits currently under bond.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This new administrative regulation will increase minimum bond amounts that entities will be required to comply with as part of providing a reclamation bond.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each permit that is issued by the department will vary depending on the features and facilities contained in the permit. The most accurate way to represent this information is to give the percentage increase in the bonding amounts captured in this administrative regulation.

Facilities	Previous Amount	Proposed Amount	Percent Increase
Access Roads	$1000/acre	$2500/acre	150%
Sediment Structures	$1500/perm.pond; $5000/temp.	$10,000/acre, minimum	100%
Refuse Disposal Areas	$2500/acre, plus site factors= $3500 average	$7500/acre, plus site factors= $9000 average	157%
Remining Areas	$1500/acre, plus site factors= $2500 average	$2000/acre, plus site factors= $3000 average	20%
All Other Mining Areas	$2500/acre, plus site factors= $3500 average	$3500/acre, plus site factors= $4500 average	29%
Supplemental Assurance	$50,000/1,500ft, or additional pit	$150,000/1,500ft, or additional pit	200%
Minimum Bond	$10,000/ permit	$75,000/permit or increment	650%

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be supplying bonds that are more closely related to the actual costs of reclamation in case the cabinet is required to perform reclamation activities on their behalf.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This new administrative regulation will not increase costs to the administrative body. Most of the elements in this administrative regulation are currently being performed because most of the elements are being moved from other administrative regulations within Chapter 10 into this one bonding administrative regulation. Therefore there are few additional duties.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Yes. Bonding on permits will be tiered depending on the facilities and features permitted.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Admin. Regulation No. 405 KAR 10:015
Contact Person: Michael Mullins, Regulation Coordinator

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?
Yes X **No** _____
If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and Division of Mine Reclamation and Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate any funds for use by the cabinet.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate any funds for use by the cabinet on a continuing basis.

(c) How much will it cost to administer this program for the first year? There are no additional costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): NA
Expenditures (+/-): NA
Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation # 405 KAR 10:015
Agency Contact: Michael Mullins, Regulation Coordinator

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.064 and 405 KAR 10:015.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The Kentucky bonding program has additional requirements not addressed by regulations promulgated by the federal Office of Surface Mining, Reclamation, and Enforcement. The additional/different requirements are necessary to adequately bond surface mining site disturbances.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Commonwealth's bonds for surface mine disturbances are inadequate and the cabinet has implemented additional/different standards in order to adequately bond these disturbances pursuant to KRS 350.064.

DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE
405 KAR 10:015

This administrative regulation incorporates the following documents:

I. Performance Bond, Form SME-42, (June, 1999). KRS 350.060 requires applicants to obtain a permit from the cabinet before beginning surface mining operations. Applicants interested in obtaining a permit through the department are required to provide a performance bond. The applicant is required to submit this form as part of their permit application. This document consists of 2 pages. This form was previously incorporated by reference in 405 KAR 10:010.

II. Irrevocable Standby Letter of Credit, Form SME-72, (July, 1994). A letter of credit must accompany the application for a performance bond. Financial institutions are responsible for completing this form. This document consists of 1 page. This form was previously incorporated by reference in 405 KAR 10:010.

III. Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A, (July, 1994). A letter of credit must accompany the application for a performance bond. Financial institutions are responsible for completing this form. This form is required if an out-of-state financial institution issues a letter of credit. A Kentucky financial institution is required to fill out this form as a confirmation for the out of state financial institution. This document consists of 1 page. This form was previously incorporated by reference in 405 KAR 10:010.

IV. Supplemental Assurance, SME-42 (SA), (July, 1994). 405 KAR 16:020 requires the use of supplemental assurance to assure the reclamation of additional unreclaimed disturbed area and shall be in addition to the required performance bond. This form is required for the submittal of supplemental assurance to the cabinet. This document consists of 2 pages. This form was previously incorporated by reference in 405 KAR 16:020.

V. Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA), (July, 1994). KRS 350.060 requires applicants to obtain a permit from the cabinet before beginning surface mining operations. The escrow agreement form is included as part of the supplemental assurance application. It is used for certificates of deposit. This document consists of 2 pages. This form was previously incorporated by reference in 405 KAR 16:020.

VI. Escrow Agreement, Form SME-64, (October, 2008). KRS 350.060 requires applicants to obtain a permit from the cabinet before beginning surface mining operations. The escrow agreement form is included as part of the performance bond application. It is used for certificates of deposit. This document consists of 2 pages. This form was previously incorporated by reference in 405 KAR 10:010.

VII. Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154. (May, 2012). KRS 350.075 authorizes the cabinet to issue special permits for the remining of previously affected areas, including secondary coal recovery operations, such as coal extraction from coal refuse piles and coal recovery from slurry ponds. This document contains information applicable to applicants who are interested in remining an area that has been previously been affected by mining operations. There are 6 pages in this document. This document was not previously incorporated by reference.

VIII. Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, (June, 1999). KRS 350.060 requires applicants to obtain a permit from the cabinet before beginning surface mining operations. Applicants interested in obtaining a permit through the department are required to provide a performance bond. The applicant is required to submit this form as part of their permit application for operations on federal lands. There are 2 pages in this document. This form was previously incorporated by reference in 405 KAR 10:010.