



ENERGY AND ENVIRONMENT CABINET DEPARTMENT FOR NATURAL RESOURCES

Steven L. Beshear
Governor

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Leonard K. Peters
Secretary

Steve Hohmann
Commissioner

IMPORTANT NOTICE CONCERNING RECLAMATION BONDING

June 14, 2013

Dear Permittee or Interested Party:

The United States Office of Surface Mining, Reclamation and Enforcement (OSM) issued a report entitled "National Priority Oversight Evaluation, Adequacy of Kentucky Reclamation Performance Bond Amounts" in January 2011 following a lengthy study of Kentucky's bonding requirements. The study determined Kentucky bonds were inadequate to complete reclamation in a significant number of bond forfeitures. OSM sent Kentucky a Part 733 letter on May 1, 2012 placing Kentucky on notice that its reclamation bonding program was deficient which required immediate and long term steps to ensure bond amounts are adequate to complete reclamation upon forfeiture.

Kentucky addressed the letter's demands by adopting regulatory amendments to immediately increase individual bond amounts, which became final September 2012. The Energy and Environment Cabinet proposed the establishment of the Kentucky Reclamation Guaranty Fund (KRGF) during the 2013 session of the General Assembly. The legislation was passed by the General Assembly and signed into law by Governor Steve Beshear on March 22, 2013.

The legislation provided for the funding and establishment of the KRGF and the framework for its administration by the newly-created Kentucky Reclamation Guaranty Fund Commission (Commission) and Office of the Reclamation Guaranty Fund (ORGF). The KRGF is a mandatory reclamation account which will cover the excess costs of reclamation for forfeited coal mining operations where the permit specific bond is insufficient for the Commonwealth to complete reclamation to program standards. All active coal mining operations within the Commonwealth will be affected by this new law as its provisions are phased in over the next year or so. It is vitally important that all permittees of surface coal mining and reclamation operations to become familiar with the changes.

Department and cabinet staff are developing administrative regulations that will detail the operations of the commission, provide information on how DNR will incorporate the new KRGF into our operations, and establish KRGF fees authorized by the statutes. These administrative regulations will be filed this summer.

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New Statutory Provisions

- The Kentucky Bond Pool, established by KRS 350.700, and the Kentucky Bond Pool Commission, established by KRS 350.705, were abolished;
- All assets, obligations, and liabilities of the former bond pool were transferred to the KRGF;
- Members of the former bond pool will continue to have their bonds for existing permits underwritten by the KRGF subject to certain limitations;
- Beginning July 1, 2013 the new Kentucky Reclamation Guaranty Fund Commission will begin to govern the KRGF. The membership of the new commission is:
 - The Secretary of the Energy and Environment Cabinet or a designee;
 - Three (3) members of the commission shall be representatives of the coal mining industry;
 - Two (2) members of the commission shall be representatives with a background in the insurance and banking industries with knowledge of the coal industry;
 - One (1) member shall be a certified public accountant, who is not associated with, or has a financial interest in, coal mining operations in the Commonwealth of Kentucky.
- Sometime after July 1, 2013, the ORGF will begin to collect assessments on all mining operations (except permits of former voluntary bond pool members) to assist in the initial capitalization of the fund. These assessments are as follows:
 - An assessment of \$1,500 per permittee regardless of the number of permits held by that entity under the exact same name; and
 - An assessment of \$10 per active permitted and bonded acre, with certain restrictions, on all permits held by permittees;
- Invoices for payment of the capitalization fee assessments will be mailed to all coal mining permit entities in the Commonwealth;
- Permittees will have 30 days to pay the assessment(s);
- Permittees will be given a choice to “opt-out” of the KRGF. Entities choosing to “opt-out” of the KRGF will avoid all fees imposed by the new law but will be required to bond current and future operations with a full cost reclamation bond. The bond will be calculated by a method prescribed by the Department based upon the United States Office of Surface Mining Reclamation and Enforcement’s Handbook for the Calculation of Reclamation Bond Amounts, OSM Directive TSR-1 and submitted as a permit revision.
- Beginning January 1, 2014 tonnage fees on coal mined and sold will be assessed. Initially the fees will be:
 - 7.57 cents per ton of coal for surface operations; and
 - 3.57 cents per ton of coal for underground operations
- Permits consisting of surface and underground operations will be assessed the tonnage fees in accordance with the predominant method of coal extraction.
- Tonnage fees will be collected quarterly and will be due in the month immediately following the end of the quarter.

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- An annual non-production fee will be assessed for permits that do not produce coal, i.e. haul roads, prep plants, refuse facilities, etc. The annual fee will be \$10 per acre for permits or increments thereof that have been bonded and disturbed, and have not yet received at least a Phase I bond release. The fee will be payable in equal quarterly installments and due within 30 days after the end of a quarter. Permittees will also be given the option to prepay the annual fee in one lump sum
- An annual dormancy fee of \$6 per acre will be assessed on all bonded, disturbed acres contained in permits or increments thereof that are not subject to the tonnage or non-production fees and have not yet received at least a Phase I bond release. The dormancy fee will also be payable in equal quarterly installments and due within 30 days after the end of a quarter. Permittees will also be given the option to prepay the annual fee in one lump sum.

Additional information concerning the new KRGF will be forthcoming from the Department, the ORGF, or the Commission. If you have any questions or comments about this letter, please contact Keith Smith, Executive Director, Office of the Reclamation Guaranty Fund, or Mark Thompson, Executive Assistant, Office of the Commissioner, #2 Hudson Hollow, Frankfort, KY 40601 or call (502) 564-6940.

Sincerely,


Steve Hohmann
Commissioner

SH/msm