

Reclamation Advisory Memorandum

RAM # 155

Kentucky Energy and Environment Cabinet

Department for Natural Resources

From: Steve Hohmann, Commissioner

Date: May 4, 2012

Subject: Implementation of New Performance Bond Calculation Protocols

Effective Date: May 4, 2012

Introduction

Effective May 4, 2012, the Division of Mine Permits is implementing the new performance bond calculation protocols found in 405 KAR 10:015E, an emergency regulation. KRS 350.060 (11) requires the cabinet to compute a performance bond amount sufficient to assure completion of reclamation if the work had to be completed by the cabinet in the event of forfeiture. The new regulation has been promulgated to resolve concerns relating to the adequacy of certain types of bond amounts previously calculated by the Department. This Reclamation Advisory Memorandum (RAM) describes the changes to bond calculation methods designed to address those concerns and provides the schedule of implementation.

Summary of New Protocols

With the filing of 405 KAR 10:015E, the Department has consolidated into one regulation all currently existing bonding criteria regarding types of bonds, bonding methods, terms and conditions of bonds, and new calculation protocols. This emergency regulation replaces 405 KAR 10:010 and 405 KAR 10:020.

This emergency regulation also contains a protocol for bond calculation for demolition and disposal costs for materials used in mining operations at preparation plants. These disposal costs will also be calculated for structures such as silos, hoists and buildings on surface disturbances at other mine sites.

Additionally, the regulation provides for the calculation of costs associated with those mine sites that have been identified as producers of substandard effluent discharges, requiring long term treatment.

The methods for both the above types of bonding situations have been utilized historically by the Department, but now have been formally promulgated in the emergency regulation. The following are the new minimum bond amounts, revised rates-per-acre and the increase in supplemental assurance contained in the above-referenced emergency regulation.

Minimum Bond Amounts

The revised minimum bond amounts for permits or increments are:

- \$75,000 for a permit bonded as a single area;
- \$75,000 per increment, for permits utilizing that bonding method;
- \$50,000 for a permit or increment that meets the criteria for re-mining;
- \$10,000 for a permit consisting only of underground operations, from which coal is removed through face-ups on other permits.

Revised Rates Per Acre

- \$2,500 per acre for coal haulage roads and mine maintenance areas;
- \$7,500 per acre for areas used for the disposal of coal refuse, be it coarse, fine or combined refuse;
- \$10,000 for off-bench (not included in any other permitted mining area), embankment sediment structures;
- \$2,000 per acre for areas involving re-mining operations;
- \$3,500 per acre for all other permitted areas, not otherwise discussed in this section of this RAM. Sediment structures located on pre-law mined benches will also be calculated at this rate per acre.

These rates per acre shall apply to the first acre permitted for each of the above features or facilities, and to each fraction thereof.

Supplemental Assurance

\$150,000 per 1500 feet of exposed highwall, or additional pit/work area.

Please note the regulatory information regarding supplemental assurance previously was found in 405 KAR 16:020, Section 6. This information has been removed from that regulation and appears in the new 405 KAR 10:015E Section 11.

Finally, Section 6(3) of the emergency regulation requires the cabinet to perform a programmatic review of bond calculation rates at a minimum of every two years to determine the adequacy of those amounts, in consideration of inflation and other increases in reclamation costs. This review is separate from the midterm review described below, but will incorporate any future adjustments as necessary.

Implementation

Effective May 4, 2012, the Division of Mine Permits will begin applying the above-referenced changes to bond calculations. All originals, amendments, and major and minor revisions that propose new surface disturbances and have not been determined to be technically complete and acceptable (TRC/TAC) will have bonds calculated according to the new protocols.

In addition, all pending and future renewals will have bonds evaluated, and recalculated as necessary, in the form of a midterm review in accordance with 405 KAR 8:010 Section 21(2).

Finally, all permits for which mining operations are on-going, or current permits which may be idle but still have reserves yet to be mined will have the bonds evaluated, and recalculated if necessary, as part of the midterm review prescribed by 405 KAR 8:010, Section 19. Those permits for which coal removal operations are complete, but reclamation operations are on-going will be evaluated on a case-by-case basis by the Director of the Division of Mine Permits.

Additional Information

405 KAR 10:015E encompasses all regulatory information previously contained in 405 KAR 10:010, 405 KAR 10:020 and certain parts of 405 KAR 10:030 pertaining solely to performance bonds. 405 KAR 10:030 now solely addresses the terms, conditions and related information for liability insurance. All other subchapters of 405 KAR Chapter 10 remain unchanged by the emergency regulation.

If you have any questions or comments about this RAM, or need further information concerning bond calculations or 405 KAR 10:015E, please contact the Director of the Division of Mine Permits, 2 Hudson Hollow, Frankfort, KY 40601 or call (502) 564-2320.

The Energy and Environment Cabinet does not discriminate on the basis of race, color, national origin, sex, age, religion, or disability and provides, on request, reasonable accommodations including auxiliary aids and services necessary to afford an individual with a disability an equal opportunity to participate in all services, programs, and activities. To request this publication in an alternative format, contact: Office of the Commissioner, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321. (502) 564-6940. FAX (502) 564-5698. e-mail: steve.hohmann@ky.gov.