

350.720 Bond pool -- Criteria -- Compliance records.

- (1) An alternative bonding program to be known as the "bond pool" shall be established. Any permittee of a surface coal mining operation located in Kentucky who meets the criteria set forth in this section and in administrative regulations promulgated by the cabinet shall be eligible to participate in the bond pool. Participation in the pool shall be voluntary.
- (2) Except as provided in KRS 350.700 to 350.755, membership in the bond pool and compliance with the requirements of KRS 350.700 to 350.755 shall satisfy the requirement to post bond in accordance with KRS 350.060(11).
- (3) An application fee shall be charged not to exceed one hundred dollars (\$100). The application fee may be applied to the membership fee set forth in KRS 350.725(1).
- (4) Except as provided in subsection (5) of this section, every permit held by a member of the bond pool shall be included in the pool, except for portions of permits disturbed prior to the member's admission into the pool, to which the provisions of KRS 350.735(4) shall apply.
- (5) No acreage on which is located a coal preparation plant, tippie, or loading facility shall be eligible for bond coverage by the bond pool fund.
- (6) The bond pool fund shall not assume any part of a member's responsibility for damage due to subsidence which occurs in connection with underground mining or auger mining.
- (7) An applicant shall be and a member shall remain eligible for membership in the bond pool only if the bond pool commission determines that the applicant or member is in good financial standing and fulfills the criteria of one (1) of the following ratings:
 - (a) An "A" rating shall be assigned to any applicant or member who:
 1. For a period of at least five (5) of the seven (7) years immediately preceding the application for membership in the pool, has held, under the same permittee name or other permittee name as provided in paragraph (d) of this subsection, a permit issued by the cabinet to conduct surface coal mining operations in Kentucky; and
 2. Has exhibited an excellent compliance record as defined by the administrative regulations of the cabinet;
 - (b) A "B" rating shall be assigned to any applicant or member who:
 1. For a period of at least five (5) of the seven (7) years immediately preceding the application for membership in the pool, has held, under the same permittee name or other permittee name as provided in paragraph (d) of this subsection, a permit to conduct surface coal mining operations in Kentucky; and
 2. Has exhibited an acceptable compliance record as defined by the administrative regulations of the cabinet;
 - (c) A "C" rating shall be assigned to any applicant or member who:
 1. For a period of at least three (3) of the five (5) years immediately

preceding the application for membership in the pool, has held, under the same permittee name or other permittee name as provided in paragraph (d) of this subsection, a permit to conduct surface coal mining operations in Kentucky; and

2. Has exhibited an acceptable compliance record as defined by the administrative regulations of the cabinet.
- (d) When approved by the commission on a case-by-case basis, permits held by persons other than the applicant or member may be used to demonstrate the years of mining experience of the applicant or member as set forth in this paragraph:
1. A person who owns fifty percent (50%) or more of the applicant or member;
 2. A person who is owned fifty percent (50%) or more by a person under subparagraph 1. of this paragraph; or
 3. Persons whose combined ownership of the applicant or member is fifty percent (50%) or more, if each person meets the years of mining experience required under this subsection.
- (8) Upon request of any member, not to exceed once per year, the commission may upgrade the member's rating. The commission may downgrade the rating of any member at any time upon the recommendation of the bond pool administrator. Any revision shall be made in accordance with the criteria set forth in this section. When a member's rating is downgraded, the commission may increase the permit-specific bond already posted in accordance with KRS 350.735.
- (9) The cabinet shall promulgate administrative regulations establishing methods and criteria for determining if an applicant or member is in good financial standing. The cabinet shall also promulgate such regulations for determining if an applicant or member has an excellent or acceptable compliance record, which may include, but shall not be limited to:
- (a) Number and seriousness of violations for which the applicant or member has been cited;
 - (b) Whether the applicant or member has abated cited violations in a timely fashion;
 - (c) Whether the applicant or member has timely paid any penalties assessed against it;
 - (d) Whether a surety which posted bond to cover a permit area of the applicant or member has had to perform reclamation to avoid bond forfeiture; and
 - (e) Whether the applicant or member has received timely bond releases.
- (10) For purposes of determining whether an applicant or member has an excellent or acceptable compliance record, the commission shall examine the compliance records of all persons who own or control, are owned or controlled by, or are under common ownership or control with the applicant or member. Where persons other than the applicant or member are considered under subsection (7)(d) of this section, each person's compliance record shall be considered.

- (11) An applicant or a member's experience pursuant to a two (2)-acre-or-less permit that was issued prior to June 6, 1987, shall not be considered in the ratings assignment, except as provided in subsection (12) of this section.
- (12) No application for membership in the bond pool shall be approved by the commission if it is determined that the applicant, or any person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant, is not eligible for a permit under the provisions of KRS 350.085, 350.093, or 350.130.
- (13) Memberships granted by the commission and ratings assigned by the commission shall not be transferable from one (1) permittee to another.
- (14) A person need not be a member of the bond pool in order to be provided coverage under the Abandoned Mine Land Enhancement Program pursuant to KRS 350.595.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 210, sec. 10, effective July 13, 1990; and ch. 389, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 397, sec. 6, effective July 15, 1988. -- Created 1986 Ky. Acts ch. 137, sec. 5, effective July 15, 1986.

Legislative Research Commission Note (7/13/90) This section was amended by two 1990 Acts. Where these Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

2012-2014 Budget Reference. See State/Executive Branch Budget, 2012 Ky. Acts ch. 144, Pt. I, E, 3, (5) at 1117.