

350.518 Permittee to submit permit-specific bond under KRS 350.060(11) -- Tonnage fees -- Assignment of mine type classification -- Inclusion of future permits of existing classification -- Inclusion of future permits of existing voluntary bond pool fund members -- Permit-specific penal bond -- Administrative regulations -- Suspension of permit for arrearage in fees -- Distribution of penalties collected under KRS 350.990(1) -- Rights and remedies.

(1) In addition to the provisions of KRS 350.500 to 350.521, each permittee shall submit a permit-specific bond in accordance with KRS 350.060(11) and all administrative regulations promulgated thereunder.

(2) Each permittee subject to KRS 350.515(1) shall pay to the fund a fee for each ton of coal mined and sold by surface and underground coal mining operations from each permit area. For the purposes of assessing tonnage fees, all permits subject to eligibility for expenditures from the fund shall be assigned to one (1) of the following classifications:

- (a) Surface coal mining operations, including auger and highwall mining, for which an initial rate of seven and fifty-seven hundredths cents (\$0.0757) per ton of coal shall be paid to the fund;
- (b) Underground coal mining operations, for which an initial rate of three and fifty-seven hundredths cents (\$0.0357) per ton of coal shall be paid to the fund;
- (c) Permits that consist of combined surface and underground mining operations shall pay a fee in accordance with the predominant method of coal extraction;
- (d) All permits previously subject to the voluntary bond pool fund at the time of its repeal by 2013 Ky. Acts ch. 78, sec. 12, shall:
 - 1. Be excluded from the start-up fee established in KRS 350.515;
 - 2. Pay the tonnage fees set forth in paragraphs (a) and (b) of this subsection to the fund in lieu of tonnage fees otherwise due under KRS 350.725(2); and
 - 3. Continue to receive subsidization of the reclamation bonding authorized under KRS 350.500 to 350.521 and the administrative regulations adopted pursuant thereto.

The fund shall continue to provide coverage for existing bonds previously issued for them by the voluntary bond pool;

- (e) Permits which are used exclusively for coal preparation and processing operations, loading activities, disposal of refuse operations, coal haulage and access roads, mine maintenance areas, and other support facilities, and other permits not subject to the provisions of paragraphs (a) and (b) of this subsection as determined by the commission, shall pay an annual fee of ten dollars (\$10) per acre to the fund in equal quarterly installments; and
- (f) Any permits, or expired permits, not subject to the fees in paragraphs (a) to (e) of this subsection shall pay an annual fee of six dollars (\$6) per surface acre to the fund in equal quarterly installments. The fee shall not apply to permits

that:

1. Have not been initially disturbed after permit issuance by the permittees;
2. Contain underground acreage only; or
3. Have received an initial bond release in accordance with KRS 350.093(4)(a).

(3) (a) The commission shall include in the fund under the terms set forth in subsection (2)(d) of this section, future permits obtained by entities that are members of the voluntary bond pool fund at the date of the establishment of the fund, provided the entity and the entity's owners seeking permit coverage have:

1. Never committed a violation for mining without having first obtained the required permit under this chapter;
2. Never forfeited a bond or had a permit revoked under this chapter;
3. Never avoided forfeiture of a bond under this chapter because of a surety-performed reclamation work to avoid forfeiture;
4. Never been determined to have demonstrated a pattern of violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);
5. Not been issued more than four (4) orders for cessation and immediate compliance pursuant to a failure to perform remediation within the time or under the terms specified by the cabinet in a notice of noncompliance and order for remedial measures in the most recent thirty-six (36) months of operation and the order was abated as ordered by the cabinet in a timely manner and was not for a violation of contemporaneous reclamation requirements as prescribed in administrative regulations promulgated by the cabinet and have reached final dispositions;
6. Not committed more than three (3) violations for contemporaneous reclamation requirements as prescribed in administrative regulations promulgated by the cabinet in the most recent thirty-six (36) months of operation and the order was abated as ordered by the cabinet in a timely manner and have reached final disposition, except the commission may for good cause shown and by unanimous vote exclude violations that have been terminated by the cabinet with no civil penalty;
7. Not committed more than eight (8) violations of surface mining permanent program requirements set forth in this chapter or any performance standards for mining established in administrative regulations promulgated by the cabinet pursuant to this chapter and which have reached final disposition on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause shown and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause shown and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

8. Not had civil penalties under this chapter or imposed pursuant to administrative hearing of the cabinet remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.
- (b) The existing members of the voluntary bond pool are deemed to qualify as members thereof under the provisions of this subsection, and the provisions of this subsection shall only apply to the existing members of the voluntary bond pool prospectively from March 22, 2013.
- (4) The increase in the total amount of bonds issued to any one (1) member of the voluntary bond pool under subsection (3) of this section shall not exceed twenty-five percent (25%) of the greater of:
 - (a) The member's aggregate amount of bonds in force and issued by the voluntary bond pool as of March 22, 2013; or
 - (b) The total of that member's aggregate amount of bonds in force and issued by the voluntary bond pool as of March 22, 2013, plus fifty-five percent (55%) of that total.
- (5) The commission may consider for inclusion in the fund under the terms set forth in subsection (2)(d) of this section permits obtained by an entity which is not a participant of the fund as of March 22, 2013, provided the entity and the entity's owners can meet eligibility standards established in administrative regulations promulgated by the commission.
- (6) Any permits accepted into the fund under the terms set forth in subsection (3) of this section shall require payment of a permit-specific penal bond computed at a rate of two thousand dollars (\$2,000) for each acre or fraction of an acre included in the proposed permit area, and shall pay the actuarially determined tonnage rates set forth in subsection (2)(a) to (c) of this section.
- (7) Changes to the rates set forth in this section and others, including those set out in subsection (2)(d) of this section, shall be made by the commission through administrative regulation and shall be in an amount sufficient to maintain actuarial soundness of the fund in accordance with the annual actuarial study.
- (8) Reporting and payment of fees shall be made in accordance with administrative regulations promulgated by the commission. The commission may request and review documents and reports from the Kentucky Department for Natural Resources and the United States Office of Surface Mining Reclamation and Enforcement to verify production records submitted by permittees.
- (9) Upon the receipt of notification from the commission that a permittee is in arrearage in the payment of any fees assessed to a permit, the cabinet shall forthwith suspend the permit. A suspension of a permit under this subsection may be appealed pursuant to the hearing provisions of KRS 350.0301.
- (10) A permit suspended by the cabinet under subsection (9) of this section shall have that suspension immediately lifted upon notification by the commission that the arrearage has been paid in full by the permittee.
- (11) Penalties collected pursuant to KRS 350.990(1) in excess of eight hundred thousand

dollars (\$800,000) in any fiscal year shall be deposited in the following manner:

- (a) Fifty percent (50%) shall be applied to the fund for purposes set forth in this chapter; and
 - (b) Fifty percent (50%) shall be applied to the abandoned mine land supplemental fund established in KRS 350.139.
- (12) Any person who considers himself or herself to be aggrieved by any determination made by the commission under KRS 350.500 to 350.521 shall have all of the rights and remedies provided in KRS 350.0301.

Effective: March 22, 2013

History: Created 2013 Ky. Acts ch. 78, sec. 7, effective March 22, 2013.

Legislative Research Commission Note (3/22/2013). Under the authority of KRS 7.136(1), the Reviser of Statutes has modified the internal numbering of subsection (2)(d) of this statute from the way it appeared in 2013 Ky. Acts ch. 78, sec. 7. The words in the text were not changed.