

### **350.105 Easement of necessity to conduct reclamation operations.**

- (1) An easement of necessity for the completion of reclamation activities, created by this subsection, requires satisfaction of these circumstances:
  - (a) An entity has, by court order or approved plan of reorganization, become responsible for performance of reclamation under a surface coal mining and reclamation permit issued by the cabinet pursuant to KRS Chapter 350 prior to July 12, 2006;
  - (b) The entity obtained those permit rights and obligations in connection with a bankruptcy proceeding;
  - (c) The permit holder's right to enter upon some portion or all of the property covered by such permit is derived from a leasehold interest in the property; and
  - (d) The lease authorizing the conducting of surface coal mining and reclamation operations was held by an entity other than the entity responsible for reclamation and has expired or was terminated prior to completion of reclamation operations for that leased property.
- (2) Upon satisfaction of paragraphs (a) to (d) of subsection (1) of this section and all other obligations provided for in this section, the entity responsible for the performance of reclamation shall be deemed by operation of law to have an "easement of necessity to conduct reclamation operations" for such property as was under the expired or terminated lease. The easement of necessity to conduct reclamation operations shall exist for a period of time that is reasonably necessary for the entity responsible for the reclamation to complete any reclamation operations required by the permit and by KRS Chapter 350, but in no case shall the easement of necessity to conduct reclamation operations exist longer than eight (8) years from the date the easement is created pursuant to this section.
- (3) In order to create the easement of necessity to conduct reclamation operations, the entity responsible for the performance of reclamation shall:
  - (a) Provide to the permitting agency, with a certified copy to the current surface owner, documentation to establish the satisfaction of the conditions imposed by this section and receive from the permitting agency a written determination that the permitted area for which the easement of necessity is requested falls within the conditions of this section; and
  - (b) Compensate the current surface owner with the fair rental value of the property for the reclamation period, including the extended liability period prior to the final bond release on the formerly leased property, as follows:
    1. The entity responsible for the reclamation shall provide a written opinion by a qualified appraiser as to the fair rental value and the basis for the determination;
    2. The surface owner and the entity responsible for the reclamation shall attempt to reach agreement as to the amount of the appropriate compensation; and
    3. If no agreement is reached as to the amount of appropriate compensation

within fifteen (15) days following receipt by the surface owner of the written offer of compensation from the entity responsible for reclamation and the appraisal report, the entity responsible for reclamation shall pay into an escrow account for the benefit of the current surface owner in a bank authorized to do business in the Commonwealth an amount equal to the written offer by the entity responsible for reclamation, which shall be not less than fifteen thousand dollars (\$15,000) for the first three (3) years of the reclamation and liability period. The entity responsible for the reclamation shall provide the current owner with the location of the escrow account.

- (4) After subsection (3)(b)3. of this section is satisfied, the entity responsible for reclamation shall have the immediate right of entry solely to perform reclamation as required by the permit and state law.
- (5) If the surface owner believes the amount placed in escrow is insufficient compensation, the owner may bring an action in the Circuit Court in the county in which the property in question is located for a determination of the fair rental value of the property.
- (6) Following the first payment, five thousand dollars (\$5,000) or the appraised fair rental value, whichever is greater, shall be paid to the current surface owner for each year of reclamation and extended liability period until the final bond release and shall be paid on the first day of each subsequent year beginning with the fourth year.
- (7) After July 15, 2008, no new easement of necessity to conduct reclamation operations created by this section shall be deemed to exist by operation of law, except for continuation of such easements that were created prior to July 15, 2008.

**Effective:** July 12, 2006

**History:** Created 2006 Ky. Acts ch. 58, sec. 1, effective July 12, 2006.