

**350.093 Time and distance limits on reclamation efforts -- Deferments -- Drift or other underground mining -- Variances -- Release of bond.**

- (1) As determined by administrative regulations of the cabinet, time and distance limits shall be established requiring backfilling, grading, and planting to be kept current, so that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable under regulations promulgated by the cabinet. All backfilling and grading shall be completed before necessary equipment is moved from the operation; except that the cabinet may for good cause approve the moving of equipment before all backfilling and grading is completed.
- (2) (a) The cabinet may allow a permittee to defer the time criteria of contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that the deferment is necessary to address at least one (1) of the following:
  1. Adverse condition including weather, labor, and other conditions clearly beyond the permittee's control;
  2. Other bona fide mining operations carried out on a strip mined area, pursuant to KRS 350.080; or
  3. Coal marketing problems.
- (b) Application for a deferment pursuant to this section shall be in the form prescribed by the cabinet. The applicant shall have the burden of establishing the need for the deferment. The applicant for the deferment shall demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation will be met during the period of the deferment. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that no environmental damage will occur during the period of deferment. Reclamation deferments may be approved for a period reasonably related to the specified conditions justifying the deferment, but the aggregate deferral period shall not exceed thirty (30) months. The deferral shall not extend beyond the expiration date of the permit. The cabinet shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.
- (3) If the permittee or operator desires to conduct drift mining or other underground mining upon the premises or use the openings for haulageways or other lawful purposes, the permittee or operator may designate locations to be used for purposes at which places it will not be necessary to backfill until the drift or other underground mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. That portion of the locations shall be described and designated on the map attached thereto. If the permittee or operator wishes to combine surface operations with underground mining operations to assure maximum practical recovery of coal resources, the cabinet may grant a variance, pursuant to regulations promulgated by the cabinet, for specific areas

within the reclamation plan from the requirement that reclamation efforts proceed pursuant to subsection (1) of this section so as to permit underground mining operations prior to reclamation.

- (4) The cabinet may release in whole or in part the reclamation bond or deposit for a particular operation if the cabinet is satisfied that the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter. These bond releases shall be made in accordance with the following schedule:
  - (a) When the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent (60%) of the bond or collateral for the applicable permit area.
  - (b) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, additional bond or collateral for the applicable permit shall be released. When determining the amount of bond to be released after successful revegetation has been established, the cabinet shall retain that amount of the bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation; this amount shall be retained for the period specified for permittee responsibility for reestablishing revegetation. No part of the bond or deposit shall be released under this subsection as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of requirements set by this chapter or until soil productivity for prime farm lands has returned to levels of yield equivalent to those of unmined land of the same soil type in the surrounding area under equivalent management practices as determined from soil surveys that may be required to be included in the permit application. If a sedimentation pond is to be retained as a permanent impoundment, the portion of bond may be released under this subsection so long as provisions for sound future maintenance by the permittee or the landowner have been made with the cabinet.
  - (c) When the permittee has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, or collateral, but not before the expiration of the period specified for permittee responsibility. No bond shall be fully released until all reclamation requirements of this chapter are fully met.
- (5) Upon satisfying the requirements of subsections (4)(a), (b), or (c) of this section, the permittee may file, or the cabinet shall initiate, an application for total or partial bond release.
  - (a) A permittee shall have the right to begin public advertisement of its request for bond release at the time it files its request for the release. The cabinet may undertake, at permittee expense, public advertisement of any cabinet initiated bond release. If the cabinet initiates a bond release pursuant to this subsection but chooses not to advertise the release pursuant to this section, and the permittee does not advertise the request for the release within the time

schedules established by this subsection, the bond release application shall be denied. All public advertisements of bond release applications, whether authorized by the permittee or the cabinet, shall begin within sixty (60) days after either the filing of a bond release request by the permittee or the initiation of a bond release by the cabinet. Public advertisement shall occur at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation.

- (b) The public advertisement required by this subsection shall include: the permit number and permit approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the cabinet to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted. Proof of advertisement shall be placed with the bond release application within thirty (30) days after the advertisement.
  - (c) Within thirty (30) days of filing of any bond release request, the permittee shall submit copies of letters which it has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. For bond releases initiated by the cabinet, the cabinet shall undertake the notification requirements set forth in this subsection.
  - (d) Upon the filing of an application for bond release by a permittee, or the initiation of the release by the cabinet, the cabinet shall notify, within thirty (30) days of the filing or initiation, the municipality where the surface coal mining operation is located, pursuant to regulations promulgated by the cabinet.
- (6) Upon the filing of any partial or total bond release request by a permittee, the cabinet shall within thirty (30) days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface or subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution.
- (7) The cabinet shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within five (5) days following receipt of proof of public advertisement as required in subsection (5)(b), or the end of the thirty (30) day public comment period, whichever is later, if no public hearing is held pursuant to subsection (10) of this section; and if there has been a public hearing held pursuant to subsection (10) of this section, within thirty (30) days thereafter.

- (8) If the cabinet disapproves the application for release of the bond or portion thereof, the cabinet shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to serve the release and allowing opportunity for a public hearing. The cabinet shall not disapprove an application for release of a surety bond or a bond secured by a letter of credit as provided for under subsection (4)(a) or (b) of this section or under the partial release provisions applicable to an interim permit, or take any action to forfeit the surety bond, or bond secured by letter of credit, solely upon the permittee's failure to pay penalties or fines, if applicable reclamation requirements for the requested release have been fully met. The cabinet shall not continue to hold under the interim or permanent program remaining surety bond proceeds or the remaining bond secured by a letter of credit where a forfeiture has occurred solely as a result of a failure to pay penalties or fines, if the reclamation requirements of this chapter have been fully met.
- (9) The bond liability of the permittee shall include only those actions which the permittee is obliged to take under the permit, including completion of the reclamation plan.
- (10) Any person having a valid legal interest which might be adversely affected by release of the bond, and the responsible officer or head of any governmental agency so designated by cabinet regulations, shall have the right to file written objections to the proposed bond release with the cabinet, and to request a hearing in accordance with procedural regulations promulgated by the cabinet.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 37, sec. 4, effective July 12, 2006. -- Amended 1992 Ky. Acts ch. 429, sec. 11, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 210, sec. 4, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 209, sec. 1, effective July 15, 1988; and ch. 294, sec. 2, effective July 15, 1988. -- Amended 1984 Ky. Acts ch. 145, sec. 3, effective March 28, 1984. -- Amended 1982 Ky. Acts ch. 283, sec. 5, effective April 2, 1982. -- Amended 1980 Ky. Acts ch. 62, sec. 10, effective March 21, 1980. -- Amended 1978 Ky. Acts ch. 33, sec. 18, effective May 3, 1978. -- Amended 1976 Ky. Acts ch. 341, sec. 2, -- Amended 1974 Ky. Acts ch. 69, sec. 4; ch. 74, Art. III, sec. 13(7); and ch. 399, sec. 1, -- Amended 1972 (1st Extra. Sess.) Ky. Acts ch. 3, sec. 69. -- Created 1966 Ky. Acts ch. 4, sec. 8.