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Coal Mine Reclamation Bonding In Kentucky

Kentucky utilizes full cost bonding and a pool bond fund. Kentucky does not allow self-bonding.

In 2011, the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) determined that bonding amounts in Kentucky were woefully insufficient for proper reclamation. In response, Kentucky began a pool bond fund, known as the Kentucky Reclamation Guaranty Fund (KRGF). Now, coal companies in Kentucky that do not provide a full cost bond are required to participate in the KRGF. Under the approved formulary, renewal of existing permits requires updated bonding, either by joining the KRGF or by putting up a full cost bond. Theoretically, all permits should be in compliance with the 2013 regulation by 2018.

Kentucky's current process of ensuring full reclamation to bond forfeited mines and long-term water treatment is insufficient.

The most prominent deficiency in Kentucky's bonding program is the failure of state regulators to set bond amounts large enough to cover the actual costs of reclamation. The state has attempted to revise bonding protocols to reduce the total cases of bond forfeiture; however, in many cases, the revised bonds would be insufficient to cover reclamation costs. Kentucky's continued reliance on a pool bonding approach is particularly problematic, as the pool is insufficient to cover wide-spread bankruptcy. The KGRF is not designed to fully fund reclamation of forfeited sites should those forfeitures include extensive environmental impacts. OSMRE has concluded that Kentucky has failed to address long-term water treatment and has denied their proposal for a 20 year treatment time frame in the bonding regulations.

Full cost bonding is the preferred way to ensure that all reclamation costs are covered, and a trust fund should be put in place to guarantee long term water treatment.

The changes to Kentucky's bonding structure that were approved by the OSMRE in January 2018 do not alleviate the bonding deficit. Kentucky should transition its program to full cost surety bonding. If Kentucky decides to continue relying on the pool bond, it must make significant reforms, including increasing the total bond pool amount so that it contains sufficient funds to cover the full costs of reclamation in the event of a significant number of permit forfeitures. A long-term water treatment system based on annuities, or another system which factors in costs for ongoing pollution treatment is needed. Kentucky currently has no plans to switch to an annuity or trust fund system, but this could change with further scrutiny and with OSMRE's denial of approval for the current plan.