



COALEX STATE INQUIRY REPORT – 124
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TOPIC: BONDING PROGRAMS

INQUIRY: Are there any states with "unusual" bonding schemes, i.e., bonding programs which assign fees after an evaluation of a specific site, rather than the more typical flat rate fee per acre bonding structure?

SEARCH RESULTS: Review of the statutory and regulatory material available in the COALEX Library on LEXIS failed to identify any specific formulas used to assign bonding rates. There are, however, states which "calculate" a bond rate per acre, as opposed to those which assign a flat fee per acre. Under this less traditional format, the per acre rate for an operator applying for a permit is determined by applying the criteria set out in Sec. 509(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1259, and the corresponding regulations, 30 CFR 800.14.

For example: "The amount of the bond required for each bonded area shall...reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and be based on, but not limited to, the estimated cost submitted by the permit applicant." 30 CFR 800.14(a)(3) and (4).

Regulatory authorities may add other factors into their calculations. Kentucky, for example, includes this criteria: "An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed." 405 KAR 10:020E, Sec. 1(4).

Although this research effort did not identify material which specifically addressed the question posed by this inquiry, a recent IMCC survey identified eight states with non-traditional bond forms. The "alternate bonding systems" include bond supplement funds and "bond pools". A description of these bonding programs and a state-by-state analysis are attached in the form of testimony by Anthony Abar before the House Interior and Insular Affairs Committee. Also included for your review are an earlier STATE COMPARISON REPORT on the topic and material on Kentucky's bond pool system.



ATTACHMENTS

- A. KENTUCKY SURFACE MINING LAW, KRS Chapter 350, Sec. KRS 350.060 (1986). Permit; application; map; transportation plan; proof of public liability insurance coverage; fee; bond; mining two acres or less; permit renewal or termination; auger mining of previously mined area; exempt operations.
- B. 405 KENTUCKY ADMIN REGS. 10:020E, Sec. 1 (1982). Amount and duration of performance bond; determination of bond amount.
- C. "Mine Reclamation and Bonding Requirements": Oversight Hearings Before the Subcomm. on Mining and Natural Resources of the House Comm. on Interior and Insular Affairs (1989) (statement of the Interstate Mining Compact Commission, presented by Anthony Abar, Dir., Md. Bur. of Mines).
- D. COALEX COMPARISON REPORT - 37, "Alternative Bonding Programs" (1985).
- E. The KENTUCKY Bond Pool (1986).
- F. KENTUCKY Senate Bill No. 130, 86 RS BR 1392 (January 16, 1986).