

353.417 Application procedures -- Duties of cabinet -- Criteria -- Requirements -- Administrative regulations.

- (1) Every Class VI underground injection control permit application filed under this section shall:
 - (a) Be on a form prescribed by the cabinet;
 - (b) Be certified by the applicant; and
 - (c) Contain all information specified by administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.
- (2) (a) Upon filing an application for a Class VI permit, an applicant shall:
 1. Pay a fee in an amount set by the cabinet; and
 2. Submit proof of public notice of the application pursuant to KRS 353.419.
 - (b) The fee shall be deposited into the carbon dioxide sequestration facility administrative fund established in KRS 353.437.
- (3) In addition to obtaining a Class VI underground injection control permit, the applicant shall secure drilling permits from the cabinet for each well described in the approved Class VI permit.
- (4) If, prior to approval of an application, the cabinet determines that the proposed sequestration facility contains commercially valuable minerals, the cabinet shall ensure that the interests of the mineral owners or mineral lessees:
 - (a) Will not be adversely affected; or
 - (b) Have been addressed in a written agreement entered into by the mineral owners, mineral lessees, and the sequestration operator pursuant to KRS 353.429.
- (5) To be considered an administratively complete application, a Class VI permit application shall include documentation that:
 - (a) The sequestration operator has the written consent of those persons having ownership interests in at least seventy-five percent (75%) of the proposed sequestration reservoir's pore space acreage; and
 - (b) A pooling order has been requested pursuant to KRS 353.449 for up to twenty-five percent (25%) of the proposed sequestration reservoir's pore space acreage for nonconsenting, unknown, and missing pore space owners.
- (6) The cabinet shall not begin technical review of an administratively complete application until the sequestration operator has:
 - (a) Demonstrated that it possesses through the requisite consent and the petition for a pooling order in accordance with KRS 353.449, the legal right to utilize one hundred percent (100%) of the pore space acreage of the proposed sequestration reservoir; and
 - (b) Provided documentation demonstrating the legal right to enter onto and conduct all surface activities and operations associated with the proposed sequestration facility.
- (7) If the cabinet determines that a bona fide dispute exists regarding the applicant's

legal right, consistent with subsections (5) and (6) of this section, to utilize any of the pore space acreage of the proposed sequestration reservoir, the cabinet shall:

- (a) Suspend technical permit review pending resolution of the property dispute by a court of competent jurisdiction or resolution by the parties; or
 - (b) Require the applicant to revise the permit application to exclude the contested pore space acreage.
- (8) A Class VI permit shall not be issued under this section unless the cabinet finds that:
- (a) The application and proposed operations comply with all requirements established by the cabinet, including any applicable Class VI underground injection control administrative regulations, and all applicable provisions of state and federal law;
 - (b) The sequestration facility is suitable and feasible for carbon dioxide injection and sequestration;
 - (c) The sequestration operator has made a good-faith effort to obtain the written consent of all persons who own the sequestration reservoir's pore space;
 - (d) The applicant has demonstrated the legal right to utilize one hundred percent (100%) of the sequestration reservoir's pore space acreage;
 - (e) The application contains documentation sufficient to demonstrate the legal right to enter onto and conduct all surface activities and operations associated with the proposed sequestration facility;
 - (f) The proposed sequestration facility will not endanger surface waters or any USDW;
 - (g) The creation, operation, and maintenance of the sequestration facility will not appreciably endanger human health or the environment;
 - (h) Adequate horizontal and vertical boundaries of the sequestration reservoir are defined, including buffer areas, to ensure that the sequestration facility is operated safely and prudently;
 - (i) The sequestration operator will establish monitoring facilities and protocols to assess the location and migration of carbon dioxide injected for sequestration and to ensure compliance with all Class VI permit, statutory, and administrative regulation requirements;
 - (j) All nonconsenting pore space owners are or will be justly and reasonably compensated in accordance with the administrative regulations and procedures set forth in and promulgated under this section by the cabinet; and
 - (k) The sequestration operator demonstrates financial responsibility as determined by the cabinet pursuant to subsections (10) and (11) of this section and applicable administrative regulations.
- (9) The cabinet shall render a decision on a permit application in accordance with KRS 353.421.
- (10) (a) A permit shall not be issued under this section unless the sequestration operator posts qualifying financial responsibility sufficient to cover the cost of:

1. Corrective action;
 2. Well plugging of Class VI injection wells and monitoring wells;
 3. Post-injection site care and facility closure;
 4. Emergency and remedial response; and
 5. Addressing endangerment of underground sources of drinking water.
- (b) The financial responsibility instruments shall contain protective conditions for coverage for cancellation, renewal, and continuation provisions. The sequestration operator shall have detailed written estimates, in current dollars, of the cost of performing the activities contained in paragraph (a)1. to 5. of this subsection. The cost estimates shall be separate for each phase and shall be based on the costs of the cabinet to hire third parties to perform the required activity.
- (c) For the duration of the permit, the sequestration operator shall annually adjust the cost estimates of each activity and provide the information to the cabinet. Any decrease or increase in the initial cost estimate shall be subject to the cabinet's approval. If at any time the current cost estimate:
1. Increases to an amount greater than the face amount of the financial responsibility instruments currently in use, the sequestration operator shall submit to the cabinet within sixty (60) days, written evidence of an increase of the face amount of the existing financial responsibility instruments or substitute another instrument in the increased amount; or
 2. Decreases to an amount lesser than the face amount of the financial responsibility instruments, those instruments may be reduced to the amount of the current estimate upon receipt of written approval from the cabinet.
- (d) The cabinet shall perform an annual evaluation of the qualifying financial responsibility to determine if the amount of financial responsibility provided by the sequestration operator is sufficient to secure the operator's obligations under state and federal law. A cabinet determination under this subsection is considered final. If the cabinet determines the amount of financial responsibility is insufficient, the sequestration operator shall:
1. Provide an adjustment of the cost estimate to the cabinet within sixty (60) days of notification by the cabinet; and
 2. Adjust the financial responsibility instruments in accordance with paragraph (c) of this subsection.
- (e) The initial deposit, use, and length of pay-in periods for trust funds or escrow accounts are subject to the cabinet's approval. The sequestration operator may make periodic deposits into a trust fund or escrow account throughout the operational period to ensure sufficient funds are available to carry out the required activities on the date on which they may occur. The cabinet shall consider project-specific risk assessments, projected timing of activities, and interest accumulation in determining whether sufficient funds are available to conduct the required activities.
- (11) (a) In demonstrating and maintaining financial responsibility as determined by

the cabinet, the sequestration operator shall provide financial responsibility from the following list of qualifying instruments:

1. Trust funds;
 2. Surety or cash bonds;
 3. Letters of credit;
 4. Insurance;
 5. Self-insurance; or
 6. Any other instrument the cabinet finds satisfactory.
- (b) The cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A to allow self-insurance as a financial responsibility mechanism for some or all of the costs and obligations of the sequestration operator under terms and conditions as the cabinet deems necessary to ensure completion of all obligations of the Class VI permit. To account for the risks of default and resulting responsibility obligations incurred by the carbon dioxide sequestration facility trust fund established in KRS 353.441, the cabinet's terms and conditions may include:
1. Corporate guarantees;
 2. Securing performance by lien or collateral; and
 3. Adjustments in assessed contributions by the sequestration operator to the carbon dioxide sequestration facility trust fund established in KRS 353.411.
- (c) All qualifying financial instruments are subject to the cabinet's approval.
- (12) (a) The cabinet shall not issue a permit under this section or approve an application to transfer a sequestration facility to a successor operator pursuant to subsection (13) of this section, and an operator shall not be eligible to receive any permits or become a successor operator under this section if:
1. The applicant has falsified or otherwise misrepresented any information on or relating to the permit application;
 2. The applicant has failed to abate or reach an agreement with the cabinet regarding an unappealed violation of KRS 353.411 to 353.459 or the administrative regulations promulgated thereunder;
 3. A control person of the applicant has a forfeiture of a financial responsibility instrument;
 4. The applicant is a control person for another operator that has a forfeiture of a financial responsibility instrument;
 5. A control person for the applicant served as a control person for another operator when an unresolved financial responsibility instrument forfeiture occurred;
 6. The applicant is or has a control person who controls or is controlled by another operator that has a forfeiture of a bond; or
 7. The cabinet determines that an activity of the applicant is currently in violation of this chapter or KRS Chapter 149, 151, 224, 349, 350, 351,

or 352 or any administrative regulation promulgated thereunder.

(b) The cabinet:

1. May restore the eligibility of applicants, operators, and control persons who are deemed permit-ineligible pursuant to paragraph (a)1. of this subsection upon resubmission of the application correcting the false or misrepresented information;
2. Shall restore the eligibility of applicants, operators, or control persons who are deemed permit-ineligible pursuant to paragraph (a)2. of this subsection upon satisfactory abatement of the violation and payment of any civil penalties;
3. Shall restore the eligibility of applicants, operators, or control persons who are deemed permit-ineligible pursuant to paragraph (a)3. to 6. of this subsection upon entry of and satisfactory compliance with an agreed order between the operator and the cabinet that resolves all the operator's outstanding violations, requires payment of any civil penalties, and provides restitution to the cabinet for any costs associated with the forfeiture, plugging, and proper abandonment of a well in excess of the financial responsibility instruments forfeited to the cabinet by the operator; and
4.
 - a. Shall provisionally restore the eligibility of applicants who are deemed permit-ineligible pursuant to paragraph (a)7. of this subsection upon either submittal of proof that the violation is in the process of being corrected to the satisfaction of the cabinet or a demonstration that the applicant has filed and is pursuing a good-faith administrative or judicial appeal to contest the violation. If the Circuit Court affirms the violation, then the applicant shall, within thirty (30) days of the judicial action, submit proof that the violation is in the process of being corrected to the satisfaction of the cabinet. Provisional restoration of permit eligibility related to paragraph (a)7. of this subsection may be withdrawn at any time if the cabinet determines that the applicant no longer satisfies the requirements of this section.
 - b. The cabinet shall fully restore the eligibility of applicants who are deemed permit-ineligible pursuant to paragraph (a)7. of this subsection upon either submittal of proof that the violation has been corrected to the satisfaction of the cabinet or that the violations have been ordered vacated in a final decision of the secretary or a reviewing court after all appeals have been exhausted.

- (13) A permit issued pursuant to this section shall not be transferred by sale, assignment, lease, or otherwise, except upon the written approval by the cabinet of a joint application submitted by both the transferor and the transferee. The joint application for transfer shall be on a form prescribed by the cabinet and accompanied by a fee in an amount set by the cabinet. Fees under this subsection shall be deposited in the carbon dioxide sequestration facility administrative fund established in KRS

353.437. The transferee shall file financial responsibility with the application in an amount and form that the cabinet deems satisfactory to cover the costs of the activities listed in subsection (10)(a) of this section. All rights and liabilities under the permit shall pass to the transferee upon written approval of the transfer by the cabinet.

- (14) The cabinet shall conduct periodic reviews of each permit issued pursuant to this section. The cabinet shall review each permit at least once every five (5) years from the date of the permit issuance and whenever the cabinet has reason to believe, based on available information, that the permit may no longer be in compliance with KRS 353.411 to 353.459. During permit review, the cabinet shall review all provisions of the existing permit, including the adequacy of the financial responsibility required by this section. The cabinet may, by determination issued to the permit holder, require revision or modification of the permit provisions, including requiring the posting of additional financial responsibility, in order to ensure compliance with this section.

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