

CHAPTER 160**(SB 237)**

AN ACT relating to the bonding of oil and gas wells.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 353.180 is amended to read as follows:

- (1) No person shall abandon or remove casings from any oil or gas well, either dry or producing, without first plugging the well in a secure manner approved by the department and consistent with its administrative regulations. Upon the department's plugging of an abandoned well in accordance with the requirements of this subsection, the department may sell, by sealed bid, or include as part of compensation in the contract for the plugging of the well, all equipment removed from that well and deposit the proceeds of the sale into the oil and gas well plugging fund, established in **subsection (24) of Section 2 of this Act** ~~[KRS 353.590(9)]~~.
- (2) Not less than thirty (30) days before advertising for bids for the plugging of wells, the department shall publish, in a newspaper of general circulation, and in locally published newspapers serving the areas in which the wells proposed for plugging are located, notices of all wells on which there is salvageable equipment, described as to farm name and Carter Coordinate location, for which the department intends to seek bids for plugging. If a person other than the operator claims an interest in the equipment of a well proposed for plugging, he shall provide documentation of that interest to the department within thirty (30) days of the date of publication of the notice of the department's intent to plug a well. Prior to the department's advertising of bids for the plugging of a well, the department shall release the well's equipment to the person deemed to have an interest in that equipment and it shall be the duty of the interest holder to remove the equipment before the well is plugged. If documentation as to an asserted interest is not provided to the department in the manner described in this subsection or a person deemed to be an interest holder fails to remove the equipment before a well is plugged, the department may sell or otherwise dispose of the equipment in accordance with this subsection.
- (3) If a person fails to comply with subsection (1), any person lawfully in possession of land adjacent to the well or the department may enter on the land upon which the well is located and plug the well in the manner provided in subsection (1), and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This subsection shall not apply to persons owning the land on which the well is situated, and drilled by other persons.

Section 2. KRS 353.590 is amended to read as follows:

- (1) Any person seeking a permit required by KRS 353.570 shall submit to the department a written application in a form prescribed by the department.
- (2) Each application shall be accompanied by a specified fee as follows:
 - (a) The fee shall be three hundred dollars (\$300) for each well to be drilled, deepened, or reopened for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole.
 - (b) If the department receives delegation of authority for administration of the underground injection control program under Section 1425 of the Safe Drinking Water Act (Pub. L. 93-523 as amended), the department may, by administrative regulation, establish a fee or schedule of fees in an amount not to exceed fifty dollars (\$50) per well, in addition to the fees imposed by paragraph (a) of this subsection, upon each application to drill, deepen, or reopen a well for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole. The fees or schedule of fees to be established by administrative regulation shall not exceed an amount sufficient to recover the costs incurred by the department in administering the Underground Injection Control Program less any other state or federal funds which are made available for this purpose.
 - (c) All money paid to the State Treasurer for fees required by paragraph (b) of this subsection shall be for the sole use of the department in the administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Pub. L. 93-523 as amended).

- (3) All money paid to the State Treasurer for licenses and fees required by KRS 353.500 to 353.720 shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (4) Each application shall be accompanied by a plat, which shows the location and elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a professional land surveyor licensed in accordance with the provisions of KRS Chapter 322.
- (5) When any person submits to the Department for Natural Resources an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall, except as provided in this section, require from the well operator *the posting of a bond. Except for bonds for well depths greater than four thousand (4,000) feet, the bond shall be posted in accordance with the following schedule:*

<i>Well Depth</i>	<i>Bond Amount</i>
<i>0 to 500 feet</i>	<i>\$500.00</i>
<i>501 feet to 1,000 feet.....</i>	<i>\$1,000.00</i>
<i>1,001 feet to 1,500 feet.....</i>	<i>\$1,500.00</i>
<i>1,501 feet to 2,000 feet.....</i>	<i>\$2,000.00</i>
<i>2,001 feet to 2,500 feet.....</i>	<i>\$2,500.00</i>
<i>2,501 feet to 3,000 feet.....</i>	<i>\$3,000.00</i>
<i>3,001 feet to 3,500 feet.....</i>	<i>\$3,500.00</i>
<i>3,501 feet to 4,000 feet.....</i>	<i>\$4,000.00</i>
<i>4,001 feet and deeper.....</i>	<i>\$5,000.00</i>

- (6) *The commission may establish a bond in a sum greater than five thousand dollars (\$5,000) for any well to be drilled to a depth of more than four thousand (4,000) feet if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established in subsection (5) of this section*~~[in the sum of five hundred dollars (\$500) for a well to be drilled to a depth of five hundred (500) feet or less; one thousand dollars (\$1,000) for a well to be drilled to a depth between five hundred and one (501) feet and one thousand (1,000) feet; one thousand five hundred dollars (\$1,500) for a well to be drilled to a depth between one thousand and one (1,001) feet and one thousand five hundred (1,500) feet; two thousand dollars (\$2,000) for a well to be drilled to a depth between one thousand five hundred and one (1,501) feet and two thousand (2,000) feet; two thousand five hundred dollars (\$2,500) for a well to be drilled to a depth between two thousand and one (2,001) feet and two thousand five hundred (2,500) feet; three thousand dollars (\$3,000) for a well to be drilled to a depth between two thousand five hundred and one (2,501) feet and three thousand (3,000) feet; three thousand five hundred dollars (\$3,500) for a well to be drilled to a depth between three thousand and one (3,001) feet and three thousand five hundred (3,500) feet; four thousand dollars (\$4,000) for a well to be drilled to a depth between three thousand five hundred and one (3,501) feet and four thousand (4,000) feet; and five thousand dollars (\$5,000) for a well to be drilled to a depth of more than four thousand (4,000) feet].~~
- (7) ~~All~~*The* ~~bonds~~ *required to be posted under this section* shall:
 - (a) Be made in favor of the Department for Natural Resources;
 - (b) ~~Be~~ *conditioned* that the wells upon abandonment shall be plugged in accordance with the administrative regulations of the department and that all records required by the department be filed as specified; *and*
 - (c) *Remain in effect until the plugging of the well is approved by the department, or the bond is released by the department.*
- (8) An operator may petition the department to amend the drilling depth and bond amount applicable to a particular well and shall not proceed to drill to a depth greater than that authorized by the department until the operator is so authorized except pursuant to administrative regulations promulgated by the department~~. The~~

~~commission may establish a bond in a sum greater than five thousand dollars (\$5,000) for any well to be drilled to a depth of more than four thousand (4,000) feet if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established above. All bonds shall remain in effect until the plugging of the well is approved by the department, or the bond is released by the department].~~

- (9) (a) Any *qualified* well operator in lieu of the *individual* bond may file with the department a blanket bond according to the following tiered structure:
1. *One (1) to twenty-five (25) wells require a ten thousand dollar (\$10,000) bond;*
 2. *Twenty-six (26) to one hundred (100) wells require a twenty-five thousand dollar (\$25,000) bond;*
 3. *One hundred one (101) to five hundred (500) wells require a fifty thousand dollar (\$50,000) bond;*
 4. *Five hundred one (501) or more wells require a one hundred thousand dollar (\$100,000) bond.*
- (b) Any *nonqualified* well operator in lieu of an *individual* bond may file with the department a blanket bond according to the following tiered structure:
1. *One (1) to one hundred (100) wells require a fifty thousand dollar (\$50,000) bond;*
 2. *One hundred one (101) or more wells require a one hundred thousand dollar (\$100,000) bond.*
- (10) To qualify for a blanket bond under the tiered structure set forth in subsection (9)(a) of this section, an operator shall:
- (a) *Have a blanket bond in place filed with the department prior to July 15, 2006, and have no outstanding, unabated violations of KRS Chapter 353 or regulations adopted pursuant thereto which have not been appealed;*
 - (b) *Demonstrate for a period of thirty six (36) months prior to the request for blanket bonding a record of compliance with the statutes and administrative regulations of the division; or*
 - (c) *Provide proof of financial ability to plug and abandon wells covered by the blanket bond.*
- (11) In addition to the requirements set forth in subsection (12) of this section, proof of financial ability set forth in paragraph (c) of subsection (10) of this section shall be established by an audited financial statement that satisfies at least two (2) of the following ratios:
- (a) *A ratio of total liabilities to net worth less than two (2); or*
 - (b) *A ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or*
 - (c) *A ratio of current assets to current liabilities greater than one and five tenths (1.5).*
- (12) If the operator is a corporate subsidiary, the operator further shall provide a corporate guarantee in which the guarantor shall be the parent corporation of the operator of the wells covered under the bond. The corporate guarantee shall provide:
- (a) *That if the operator fails to perform with the proper plugging and abandonment of any well covered by the blanket bond, the guarantor shall do so or provide for alternate financial assurance; and*
 - (b) *The corporate guarantee shall remain in force unless the guarantor sends notice of the cancellation by certified mail to the operator and to the department. Cancellation shall not occur, however, during the one hundred twenty (120) day period beginning on the first day that both the operator and the department have received notice of cancellation, as evidenced by the certified mail return receipts.*
- (13) An operator shall not be eligible for blanket bonding if:

- (a) *It has more than ten (10) violations of KRS Chapter 353 or the regulations adopted pursuant thereto within the thirty-six (36) month period;*
 - (b) *It has any outstanding, unabated violations of KRS Chapter 353 or the regulations adopted pursuant thereto which have not been appealed;*
 - (c) *It has a forfeiture of a bond, whether an individual bond or portion of a blanket bond on any permit where the operator has not entered into an agreed order with the department for the plugging and proper abandonment of the well, or wells, on the forfeited permit, or permits; or*
 - (d) *It has a permit, or permits, upon which a bond, or portion of a bond, has been forfeited and the proceeds from the forfeiture have been spent by the department to plug or reclaim the permitted well or wells, unless the operator has made restitution to the department for all costs associated with the forfeiture, plugging, and proper abandonment*~~[in a sum of ten thousand dollars (\$10,000), covering all wells drilled or to be drilled in the Commonwealth by the principal in the bond, and the acceptance and approval by the department of the blanket bond shall be in full compliance with the above provision requiring an individual well bond].~~
- (14) A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds.
- (15) Individuals acquiring a single well for domestic use may post a combination bond which shall consist of a cash bond in the amount of one thousand dollars (\$1,000) plus a lien on the property to cover future plugging costs. Only one (1) combination bond may be posted by each individual.
- (16) A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may *serve for an*~~also be accepted by the department. If an operator is required to post~~ individual well *bond*~~[bonds exceeding a total of five thousand dollars (\$5,000) or elects to post a blanket bond, the certificate of deposit shall be accepted by the department in lieu of that portion of the amount of the bonds exceeding five thousand dollars (\$5,000)].~~ *A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may serve for a blanket bond provided that the first five thousand dollars (\$5,000) of the blanket bond is posted with the department in cash.*
- (17) The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety authorized to do business in the Commonwealth.
- (18) A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the oil and gas well plugging fund, created in subsection (24)~~(9)~~ of this section, to be used in accordance with the purposes described therein. All cash bonds being held by the department on July 13, 1990, shall likewise be deposited in the interest-bearing account, with the proceeds to be used for the purposes established for the oil and gas well plugging fund.
- (19) The bond amounts *prescribed by subsection (5) of this section* shall be applicable only to permits issued upon and after *July 15, 2006*~~July 13, 1990~~. All bonds posted for permits issued prior to *July 15, 2006*~~July 13, 1990~~, shall remain in full force and effect for the duration of the permits.
- (20) *The blanket bond amounts prescribed by subsection (9) of this section shall be effective upon and after July 15, 2006. Any operator having filed a blanket bond with the department prior to July 15, 2006, may at its discretion increase the level of the blanket bond incrementally by increasing the blanket bond by the amount of the individual bond prescribed by subsection (9) of this section on any wells drilled subsequent to July 15, 2006, until the blanket bond has reached the level prescribed by subsection (9) of this section.*
- (21)~~(6)~~ A successor to the well operator shall post bond, pay a twenty-five dollar (\$25) fee per well to the department, and notify the department in writing in advance of commencing use or operation of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.
- (22)~~(7)~~ If the requirements of ~~subsection (5) of~~ this section with respect to proper plugging upon abandonment and submission of all required records on all well or wells have not been complied with within

the time limits set by the department, by administrative regulation, or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit.

- (a) The notice shall specify in what respects the operator has failed to comply with this chapter or the administrative regulations of the department.
 - (b) If the operator has not reached an agreement with the department or has not complied with the requirements set forth by it within forty-five (45) days after mailing of the notice, the bond shall be forfeited to the department.
- ~~(23)(8)~~ A bond forfeited pursuant to the provisions of this chapter may be collected by an attorney for the department or by the Attorney General, after notice from the director of the Division of Oil and Gas Conservation.
- ~~(24)(9)~~ All sums received under ~~subsection (5) of~~ this section or through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the oil and gas well plugging fund, which shall be an interest-bearing account with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned wells coming within the authority of the department pursuant to this chapter. The plugging of any well pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.
- ~~(25)(10)~~ Upon request by any person applying for a permit for a geological or structure test hole, the department shall keep the location and elevation of the hole confidential until the information is allowed to be released by the person obtaining the permit.
- ~~(26)(11)~~ For the purpose of this chapter, "water supply well" shall not include:
- (a) Any well for a potable water supply for domestic use or for livestock; or
 - (b) Any water well used primarily for cooling purposes in an industrial process.
- (27) ***Notwithstanding the provisions of KRS Chapter 353 or this section, no operator shall be eligible to receive additional permits if that operator or any entity in which it has an ownership interest has:***
- (a) ***Any outstanding, unabated violations of KRS Chapter 353 or the regulations adopted pursuant thereto, which have not been appealed;***
 - (b) ***It has a forfeiture of a bond, whether an individual bond or portion of a blanket bond, on any permit where the operator has not entered into an agreed order with the department for the plugging and proper abandonment of the well, or wells, on the forfeited permit, or permits; or***
 - (c) ***It has a permit, or permits, upon which a bond, or portion of a bond, has been forfeited and the proceeds therefrom having been spent by the department to plug or reclaim the permitted well, or wells, unless the operator has made restitution to the department for all costs associated with the forfeiture, plugging, and proper abandonment.***

Section 3. KRS 353.592 is amended to read as follows:

In addition to the powers conferred upon the department by KRS 353.500 to 353.720 and notwithstanding any provision of KRS 353.500 to 353.720, the department is authorized but not obligated to develop and promulgate a regulatory program for the purpose of accepting primary responsibility for administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended). To that end, the department shall include in any regulatory program developed and promulgated under this provision:

- (1) Regulations regarding the drilling, casing, operation, plugging, construction, conversion, maintenance, and abandonment of class II wells to protect underground sources of drinking water and to prevent their endangerment;
- (2) Regulations prohibiting underground injection through class II wells except as authorized by such regulations or by a permit issued pursuant thereto;

- (3) Regulations requiring owners or operators of class II wells to demonstrate financial responsibility for the costs of closure of all class II wells. Such demonstration of financial responsibility may include but need not be limited to the well plugging bond required by KRS 353.590(5) *and subsection (9) of Section 2 of this Act*;
- (4) Regulations providing for reasonable public notice of applications for permits for class II wells and providing for public participation in the issuance of such permits;
- (5) Regulations establishing a schedule of fees for the mechanical integrity testing and periodic registration of class II wells to be paid by the owners or operators thereof. The schedule of fees shall be based upon the reasonable cost to the department of administering the underground injection control program. The regulations may provide for the collection of a fee prior to delegation of authority by the Federal Environmental Protection Agency which shall be refunded by the department if the department does not receive said delegation.

No regulation promulgated pursuant to this section shall authorize the endangerment of an underground source of drinking water or be more stringent than regulations promulgated by the Environmental Protection Agency pursuant to the Underground Injection Control Program of the Safe Drinking Water Act, 42 U.S.C. sec. 300f et seq.

Section 4. KRS 353.730 is amended to read as follows:

- (1) Any person may investigate an abandoned well upon receipt of approval from the department. The person shall submit to the department:
 - (a) An application requesting approval to investigate and stating the planned methods for the investigation. In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, the application shall include a plan to prevent erosion and sedimentation;
 - (b) A twenty-five dollar (\$25) fee; and
 - (c) A certification by the applicant that he has the authority to enter the property upon which the well is located and to conduct the investigation.
- (2) The department shall review all applications for investigation. If the department approves the request for investigation, the applicant shall be allowed to produce the well without a permit as required by KRS 353.570, and the applicant shall submit a report of investigation to the department on forms provided by the department. In order to produce the well for more than sixty (60) days, the applicant must obtain a bond as required by KRS 353.590(5) *or subsection (9) of Section 2 of this Act*. Notwithstanding the provisions of KRS 353.590(2), no fee shall be required for any such well.

Approved April 5, 2006.