

## CHAPTER 79

## (HB 452)

AN ACT relating to mining around oil and gas wells.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 352 IS CREATED TO READ AS FOLLOWS:

*All maps and plans required under this chapter shall be submitted by the coal operator providing coordinates in feet units using NAD 83, with Single Zone Projection, as those terms are defined in Section 12 of this Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*It is hereby declared the public policy of the Commonwealth to provide for the safety of underground coal miners employed in areas near or adjacent to oil and gas exploration activities while furthering the policy of the Commonwealth as stated in KRS 353.500 with respect to the conservation and encouragement of exploration and development of oil and gas resources.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to collect and provide accurate information regarding the location of a well drilled through a workable coal bed, the well operator shall, within thirty (30) days following the drilling of the well, provide to the division a plat which shows the well's as-drilled location and elevation. The plat shall be certified as accurate by a professional land surveyor licensed in accordance with the provisions of KRS Chapter 322 and shall be provided in addition to the plat accompanying the application for permit, which is required under KRS 353.590(4). The as-drilled well location plat required by this section shall provide coordinates in feet units, using NAD 83, with Single Zone Projection as those terms are defined in Section 14 of this Act.*
- (2) *A well shall be deemed to be in compliance with applicable permit requirements if the as-drilled location of the well is:*
  - (a) *At the surface, within fifteen (15) feet of the location specified in the permit to drill; and*
  - (b) *Drilled through the base of the lowest workable coal bed within one hundred fifty (150) feet from the true vertical of the as-drilled surface location.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *Within ten (10) days of the drilling of the well, the well operator shall have performed, at its expense, a directional survey for any well drilled in an active mining area or an inclination survey for any well drilled through a workable coal bed that is not in an active mining area.*
- (2) *If, as a result of the as-drilled well location plat prepared pursuant to Section 2 of this Act or the directional or inclination survey performed under subsection (1) of this section, it is determined that a well or any portion of a well has been drilled at either a surface location or a subsurface location at the base of the lowest workable coal bed that is not in compliance with the allowable distances established in subsection (2) of Section 3 of this Act, as well as the spacing requirements of KRS 353.610, then the well operator shall promptly notify the Division of Oil and Gas Conservation of the noncompliance. The division shall order the well operator to remediate the noncompliance to bring the well within the allowable distances that have been exceeded. If the division determines that the well's permit conditions cannot be satisfied by remediation or that the well operator is unable to satisfactorily meet the ordered remediation, then the division shall order the well to be plugged and abandoned.*
- (3) *No remediation shall be required under subsection (2) of this section if:*
  - (a) *A directional survey indicates that the well is not in compliance with the allowable distance established in paragraph (b) of subsection (2) of Section 3 of this Act, but the well is in compliance with the spacing requirements of KRS 353.610; and*
  - (b) *The well operator receives a waiver for the noncompliance from the coal operator or permittee.*
- (4) *No remediation shall be required under subsection (2) of this section if:*

- (a) *An inclination survey indicates that the well is not in compliance with the allowable distances established in subsection (2) of Section 3 of this Act, but the well is in compliance with the spacing requirements of KRS 353.610; and*
- (b) *The well operator performs or causes to be performed a directional survey to identify the correct subsurface location of the wellbore.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*Upon the request of a coal operator, a well operator shall perform or cause to be performed a directional survey on any well drilled outside an active mining area within sixty (60) days of the request. The coal operator shall pay all actual costs associated with the survey. The coal operator shall indemnify the well operator for any damages that are incurred as a result of the performance of the directional survey, but the coal operator shall not be liable for any loss of revenue incurred as a result of a reasonable shut-in period during which the directional survey is conducted.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*A coal, oil, or gas operator that has a directional or inclination survey performed pursuant to Sections 3 and 4 of this Act shall provide a copy of the survey to the Division of Oil and Gas Conservation. The division shall be responsible for reasonably maintaining and updating all information required by this chapter regarding oil and gas wells.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *For gathering lines installed across terrain with a slope of greater than twenty degrees (20°), the well operator shall mark the location of the gathering lines with line markers at interval distances not to exceed two hundred fifty (250) feet.*
- (2) *The Division of Oil and Gas Conservation shall make available on its Web site maps or other relevant information showing the location of gathering lines, as filed by the well operator, within thirty (30) days of the information being filed.*
- (3) *Prior to the issuance of a permit to drill, the division shall determine whether the proposed well will intersect an active mining area by reviewing the pertinent mine maps filed with the Office of Mine Safety and Licensing. If the proposed well will intersect with an active mining area, the division shall:*
  - (a) *Determine whether the coal mine permittee has been properly notified pursuant to KRS 353.050; and*
  - (b) *Issue the permit to drill on the condition that a directional survey be performed pursuant to subsection (1) of Section 4 of this Act.*
- (4) *In order to perform the duties under this section, the Division of Oil and Gas Conservation shall create and adequately staff the positions required to perform the duties. The division may charge an administrative fee not to exceed fifty dollars (\$50) per permit application to perform its duties under this section.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*Nothing in Sections 2 to 8 of this Act shall be deemed an impairment or diminution of correlative rights or a modification of the well spacing requirements in KRS 353.610, except as specifically provided otherwise.*

➔Section 9. KRS 349.040 is amended to read as follows:

- (1) It is unlawful for any person to drill, commence, operate, deepen, convert, or stimulate any coalbed methane well, to conduct any horizontal drilling of a coalbed methane well or to convert any existing oil or natural gas well to a coalbed methane well, without first securing from the department a permit pursuant to this chapter. Before any well, borehole, or facility initially used for a coal mining related purpose, such as a vent hole, is converted for the purpose of recovering coalbed methane for sale or use, the operator shall obtain a permit and comply with the provisions of this chapter prior to the time that the well, borehole, or facility is converted or used for the purpose of recovering coalbed methane for sale or use. It is unlawful for any person to drill, deepen, convert, or reopen a coalbed methane well for the production of oil or natural gas or for the injection of water, gas, or other fluids into any oil or natural gas producing formation until the person has obtained a permit from the department for a petroleum or natural gas well pursuant to KRS 353.570. However, no additional permit fee shall be required if the original permit for the coalbed methane well has not expired.

- (2) Every permit application filed under this section shall be verified and shall contain the following:
- (a) A statement that the applicant claims to have a valid real property interest in, or the current legal right to produce coalbed methane from a person claiming a valid real property interest in, the coalbed methane. The statement shall identify with specificity the nature of the real property interest and the document or instrument evidencing that interest or right, including recording information of any recorded document or instrument;
  - (b) The names and addresses of the coalbed methane well operator and every person or entity whom the applicant must notify under any section of this chapter;
  - (c) The name and address of each coal interest holder of any workable coalbed which is to be penetrated by a proposed coalbed methane well or within seven hundred fifty (750) horizontal feet or fifty (50) vertical feet of any portion of the proposed coalbed methane well;
  - (d) The name and addresses of each record oil and gas lessee of, the record oil and gas lessor of, and the operator of all oil and gas formations from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract upon which the coalbed methane well is proposed to be located;
  - (e) The coalbed methane well name or such other identification as the department may require;
  - (f) The approximate depth to which the coalbed methane well is to be drilled, deepened, or converted, the coal seams including the depth and thickness of each seam that will be completed for production, and any other coal seams which will be penetrated by the coalbed methane well;
  - (g) A description of any means to be used to stimulate any of the workable coalbeds penetrated by the coalbed methane well;
  - (h) If the proposed coalbed methane well will require casing or tubing, the entire casing program for the coalbed methane well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each string is to be cemented;
  - (i) If the proposed operation is to convert an existing petroleum or natural gas well, as defined in KRS 353.010(19)~~((43))~~, or to convert a vertical borehole or facility initially used for a coal mining related purpose, such as a vent hole, to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;
  - (j) Except for a vent hole proposed to be converted to a coalbed methane well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the coalbed methane well which will protect all workable coalbeds which will be penetrated by the coalbed methane well;
  - (k) If the proposed operations will include horizontal drilling of a coalbed methane well, a description of the operations, including both the vertical and horizontal alignment and extent of the coalbed methane well from the surface to total depth; and
  - (l) Other information as the department may require consistent with this chapter.
- (3) Each application for a coalbed methane well permit shall be accompanied by the following:
- (a) A permit application fee of three hundred dollars (\$300);
  - (b) A bond in an amount prescribed in KRS 349.120;
  - (c) A certificate that the applicant's notice requirements of KRS 349.015 have been satisfied. Certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;
  - (d) If the proposed coalbed methane well will be located within one-half (1/2) of a mile, measuring horizontally, of a water supply well being used for residential or domestic purposes, the applicant will submit the groundwater protection plan required under KRS 224.70-110 and applicable administrative regulations promulgated pursuant thereto for review by the department, or demonstrate to the department that a plan is not required; and

- (e) Proof that the applicant has public liability insurance coverage in an amount not less than five hundred thousand dollars (\$500,000) in aggregate and three hundred thousand dollars (\$300,000) per occurrence for damages to persons and property caused by the applicant's operations or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations which shall be promulgated by the department.
- (4) Prior to the department's issuance of a permit to drill a coalbed methane well, a copy of the written authorization from the mine licensee shall be filed with the application under the following circumstances:
- (a) If the proposed coalbed methane well is to penetrate a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the division and if the applicant plans to stimulate, complete, or horizontally drill the coalbed methane well in a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the division;
  - (b) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit, or the proposed permitted area of a permit pending before the division for which no bond release has been obtained; or
  - (c) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit by the division for which a partial bond release has been obtained.

If a coalbed methane well permit is issued for a well site located within the boundaries of any coal mine for which a permit has been issued or is pending pursuant to KRS Chapter 350, the permit shall include a provision specifically stating that the permitted coalbed methane well location is in an area for which a coal mine permit has been issued or is pending pursuant to KRS Chapter 350 and is subject to the mine-through rights set forth in KRS 349.030(1).

- (5) If a partial bond release for the surface area on which the proposed coalbed methane well is located has been obtained from the division and the applicant is denied written authorization from the mine licensee, the applicant may file an appeal with the review board requesting approval to drill the proposed coalbed methane well. When requesting an appeal, the applicant shall submit a verified statement including the following:
- (a) The applicant has met and conferred with or offered to meet and confer with the mine licensee concerning the authorization;
  - (b) The mine licensee has refused to provide written authorization to disturb the permitted area;
  - (c) The physical area to be disturbed by the proposed well location and the use of area, including ingress and egress thereto, qualifies as a commercial or industrial postmining land use entitling the mine licensee to a complete bond release for the area to be disturbed by the coalbed methane well operator in accordance with KRS Chapter 350; and
  - (d) The applicant has agreed to pay the reasonable and actual costs of the permit revision required by the division to affect the incremental bond release for the proposed area to be disturbed by the coalbed methane well operator, not to exceed five thousand dollars (\$5,000).
- (6) Prior to the issuance of a permit to drill a coalbed methane well, the applicant shall grant assignable subsidence waivers to any mine licensee if requested in an objection filed pursuant to KRS 349.060 and, if required, to allow present or future mining with planned subsidence under KRS Chapter 350. However, this subsection and any subsidence waivers shall in no way waive, affect, or impair the ability of the applicant or the applicant's successors or assigns to pursue any remedies for damages to persons, or to improved or tangible property, suffered or incurred as a result of any subsidence caused by the mine licensee or the mine licensee's successors or assigns. The mine licensee, its successors or assigns, shall be liable for any and all damages to persons or to improved or tangible property proximately caused by the mine licensee.
- (7) If the mine licensee is mining in a coal seam that is not being produced by the coalbed methane well operator and has not exercised his or her mine-through rights, as set forth in KRS 349.030(1) or (2), in any coal mine before removing any coal or other material or driving any entry or passageway within five hundred (500) horizontal feet of the vertical segment of a coalbed methane well or within fifty (50) vertical feet of the horizontal segment of a coalbed methane well, the mine licensee shall forward simultaneously to the well operator and to the department, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date. Maps or plans shall show the mine workings

and projected mine workings within five hundred (500) horizontal feet of the coalbed methane well. However, the issuance of any coalbed methane well permit shall not preclude or prevent coal mining outside two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of a coalbed methane well or outside of the workable coalbed in which the horizontal segment of a coalbed methane well is located, unless specified by the department for reasons of mine or well safety. The mine licensee shall not mine within fifty (50) feet of the vertical segment of a coalbed methane well without the written authorization of the coalbed methane well operator. A mine licensee may file a request with the department to mine closer than two hundred (200) feet of the vertical segment of the coalbed methane well. The mine licensee shall forward simultaneously to the well operator and the department, by certified mail, return receipt requested, or by registered mail, a request to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, which shall be accompanied by the following:

- (a) A copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine plan workings and projected mine workings beneath the tract of land and within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well; and
- (b) A statement that the applicant has met and conferred with, or offered to meet and confer with, the well operator concerning the mine licensee's plan to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well.

The well operator may, within twenty (20) days of receipt of the documents listed in paragraphs (a) and (b) of this subsection, file specific objections in writing with the department. When objections are filed, the department shall provide a copy of the objections to the mine licensee and fix a time and place for an informal hearing. The hearing shall be held not more than ten (10) days from the end of the twenty (20) day period. At the hearing, the mine licensee and the well operator, in person or by representative, shall consider the objections and seek agreement on the character and the extent of operations to be conducted within less than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well. If no agreement can be reached, the department, after administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is necessary to be left for the safe protection, use, and operation of the well. The department's decision shall be subject to appeal by either party as provided in this chapter. The department shall keep a complete record of all hearings. The mine licensee shall, every six (6) months, while mining within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, file up-to-date maps and plans required by this section, or file new maps and plans complete to date.

- (8) The department may deny the issuance of a permit if it determines that the applicant has a documented pattern or practice of substantial violations of the provisions of this chapter and has failed to abate or seek review of the violations. If the department finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, the department may suspend the permit. After a suspension, the operator shall forthwith cease all work being conducted under the permit until the department reinstates the permit. The department shall make a written finding of its determination and may enforce the determination in Circuit Court pursuant to KRS 349.145.

➔Section 10. KRS 350.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Excavation for the purpose of obtaining coal includes extraction of coal from refuse piles. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government

financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

- (2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;
- (3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;
- (4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;
- (5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;
- (6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;
- (7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;
- (8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;
- (9) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization and shall also include any agency, unit, or instrumentality of federal, state, or local government including any publicly-owned utility or publicly-owned corporation of federal, state, or local government;
- (10) "Cabinet" means the Environmental and Public Protection Cabinet;
- (11) "Secretary" means the secretary of the Environmental and Public Protection Cabinet;

- (12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;
- (13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;
- (14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;
- (15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;
- (16) "Certification" by a qualified registered professional engineer, as required by this chapter and administrative regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and administrative regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee;{+}
- (17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;{+}
- (18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.01-010(20);{+}
- (19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;{+}
- (20) "Permit applicant" or "applicant" means a person applying for a permit;{+}
- (21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations;{+}
- (22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit;{+}
- (23) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under KRS 350.560(1) or (2);{+}
- (24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and waste from fluidized bed combustion, produced by the combustion of coal. Coal combustion by-products do not include boiler slag, or residues of refuse derived fuels, such as municipal solid waste, tires, and solvents;{+}
- (25) ***"NAD 83" means the North American Datum, 1983 version, in feet units; and***
- (26) ***"Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal map projection with double standard parallels on the North American Datum, as established in 10 KAR 5:010.***

➔Section 11. KRS 350.060 is amended to read as follows:

- (1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.

- (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.
- (3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:
- (a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;
  - (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;
  - (c) The owner or owners of the coal to be mined;
  - (d) The source of the applicant's legal right to mine the coal on the land affected by the permit;
  - (e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;
  - (f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of the permits;
  - (g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;
  - (h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and
  - (i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.
- (4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.
- (5) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.
- (6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:
- (a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the



engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;

- (b) Identify the area to correspond with the application;
  - (c) Show adjacent deep mining;
  - (d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;
  - (e) Be of a scale of 1:24,000 or larger;
  - (f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected ***within three hundred (300) feet of an as-drilled oil or gas well, but as-drilled locations of oil and gas wells shall be certified only by a licensed surveyor and the well locations shall be entered in coordinates in feet units, using NAD 83, Single Zone Projection, as those terms are defined in Section 10 of this Act***~~and within five hundred (500) feet of the area~~;
  - (g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;
  - (h) Show the date on which the map was prepared, the north point, and the quadrangle name; and
  - (i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.
- (7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.
- (8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map as incomplete if it is not properly certified.
- (9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling; grading work; and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.
- (10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.
- (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed three hundred seventy-five dollars (\$375), plus a fee set by administrative regulation but not to exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan. The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of

the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. The cabinet shall promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds.

- (12) The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations; provided, that the cabinet shall require that all the areas overlying underground workings be permitted but that the areas overlying underground workings not affected by operations and facilities occurring on the surface shall not be subject to the payment of acreage fees or bond requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.
- (13) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed three hundred seventy-five dollars (\$375). The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:
  - (a) The terms and conditions of the existing permit are not being satisfactorily met;
  - (b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;
  - (c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;
  - (d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or
  - (e) Any additional revised or updated information required by the cabinet has not been provided.

Prior to the approval of any renewal of permit, the cabinet shall provide notice to the appropriate public authorities.

- (14) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.
- (15) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.
- (16) Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.
- (17) Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to

augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued. The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.

- (18) All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

➔Section 12. KRS 352.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:

- (a) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;
- (b) "Active workings" means all places in a mine that are ventilated and inspected regularly;
- (c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
- (d) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
- (e) "Board" means the Mining Board created in KRS 351.105;
- (f) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
- (g) "Commissioner" means commissioner of the Department for Natural Resources;
- (h) "Department" means the Department for Natural Resources;
- (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
- (j) "Excavations and workings" means the excavated portions of a mine;
- (k) "Executive director" means the executive director of the Office of Mine Safety and Licensing;
- (l) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in any entry or room;
- (m) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
- (n) "Gassy mine." All underground mines shall be classified as gassy or gaseous;
- (o) "High voltage" means any voltage of one thousand (1,000) volts or more;
- (p) "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical injury before the condition or practice can be abated;
- (q) "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;
- (r) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;

- (s) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (t) "Low voltage" means up to and including six hundred sixty (660) volts;
- (u) "Medium voltage" means voltages greater than six hundred sixty (660) and up to nine hundred ninety-nine (999) volts;
- (v) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;
- (w) "Mine foreman" means a certified person whom the licensee, mine manager, or superintendent places in charge of the workings of the mine and of persons employed therein;
- (x) "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
- (y) ***"NAD 83" means the North American Datum, 1983 version in feet units;***
- (z) "Open-pit mine" shall include open excavations and open-cut workings including auger operations and highwall mining systems for the extraction of coal;
- ~~(aa)~~~~(z)~~ "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- ~~(ab)~~~~(aa)~~ "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification;
- ~~(ac)~~~~(ab)~~ "Preshift examination" refers to the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any oncoming shift;
- ~~(ad)~~~~(ae)~~ "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
- ~~(ae)~~~~(ad)~~ "Serious physical injury" means an injury which has a reasonable potential to cause death;
- ~~(af)~~~~(ae)~~ "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- ~~(ag)~~ ***"Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal Conical map projection with double standard parallels on the North American Datum, 1983 version, as established in 10 KAR 5:010;***
- ~~(ah)~~~~(af)~~ "Slope" means an inclined opening used for the same purpose as a shaft;
- ~~(ai)~~~~(ag)~~ "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- ~~(aj)~~~~(ah)~~ "Supervisory personnel" shall mean a person or persons certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- ~~(ak)~~~~(ai)~~ "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;
- ~~(al)~~~~(aj)~~ "Working face" means any place in a coal mine at which the extraction of coal from its natural deposit in the earth is performed during the mining cycle;
- ~~(am)~~~~(ak)~~ "Working place" means the area of a coal mine in by the last open crosscut;

~~(an)~~~~(a)~~ "Working section" means all areas of a coal mine from the loading point to and including the working faces; and

~~(ao)~~~~(am)~~ "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.

- (2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.
- (3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010 and shall not apply to electrical facilities owned, operated, or otherwise controlled by a retail electric supplier or generation and transmission cooperative as defined in KRS 278.010 or organized under KRS Chapter 279 for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established easement rights on private property and that are covered by the National Electric Safety Code (NESC) or other applicable safety codes, or other authorities having jurisdiction and shall not apply to installations under the exclusive control of utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established rights on private property.

➔Section 13. KRS 352.510 is amended to read as follows:

- (1) In any underground mine before removing any coal or other material or driving any entry or passageway within **three hundred (300)**~~five hundred (500)~~ feet of any *surveyed* natural gas or petroleum well, or before extending the workings in any mine beneath any tract of land on which these wells are also drilled, or within **three hundred (300)**~~five hundred (500)~~ feet of any of these wells or under any tract of land in visible possession of a well operator, the operator shall forward simultaneously to the well operator and to the Department for Natural Resources, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine workings and projected mine workings beneath the tract of land and within **three hundred (300)**~~five hundred (500)~~ feet of its outer boundaries. The operator may then proceed with his mining operations in the manner indicated on the copy of the map or plan; but if the conduct of his mining operations nearer than **three hundred (300)**~~five hundred (500)~~ feet to any *surveyed natural gas or petroleum* well, whether completed or being drilled, or to any proposed well where a derrick is being constructed for drilling, or proposed well will endanger the use of drilling of the well, the well owner or operator affected may, within fifteen (15) days from the receipt of the copy of the map by him and the department, file specific objections in writing to the mining operations within less than **three hundred (300)**~~five hundred (500)~~ feet of the well; and if the objection is filed, the department shall notify the operator of the character of the objections and fix a time and place for an informal hearing not more than ten (10) days from the end of the fifteen (15) day period. At the hearing, the operator and the well operator, in person or by a representative, shall consider the objections and agree upon the character and extent of operations to be conducted within less than **three hundred (300)**~~five hundred (500)~~ feet of the well to satisfy the objections raised and meet the approval of the department. And, if no agreement can be reached, the department, after an administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is necessary to be left for the safe protection of the use and operation of the well. The decision shall be subject to appeal by either party as provided in KRS 351.040. The department shall keep a complete record of all the hearings.
- (2) The mine operator shall, every six (6) months, while mining within **three hundred (300)**~~five hundred (500)~~ feet of the *surveyed natural gas and petroleum* well, bring up to date the maps and plans required by this section, or file new maps and plans complete to date.
- (3) ***Prior to issuance of a waiver to mine within three hundred (300) feet of an oil or gas well, the Office of Mine Safety and Licensing shall determine whether the oil or gas operator has been properly notified as required by subsection (1) of this section.***

➔Section 14. KRS 353.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) ***"Active mining area" means the area within two hundred (200) feet surrounding current mine works under development, inclusive of the area of five (5) year projections, as indicated on the annually filed mine license map.***
- (2) "Barrel" or "barrel of oil" means forty-two (42) standard United States liquid measure gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit.
- (3)~~(2)~~ "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas and petroleum.
- (4)~~(3)~~ "Cement" means hydraulic cement properly mixed with water only.
- (5)~~(4)~~ "Coal operator" means any person who proposes to or does operate a coal mine.
- (6)~~(5)~~ "Cubic feet of gas" means the volume of gas contained in one (1) cubic foot of space at a standard pressure base of fourteen and seventy-three hundredths (14.73) pounds per square inch and a temperature base of sixty (60) degrees Fahrenheit.
- (7)~~(6)~~ "Department" means the Department for Natural Resources.
- (8) ***"Directional survey" means a survey performed while drilling using continuous measuring technology, a survey made through drilling tools, or other surveys at such intervals to accurately determine the location of the deviated wellbore.***
- (9)~~(7)~~ "Gas" means natural gas.
- (10)~~(8)~~ "Gas well" means any well which:
- (a) Produces natural gas not associated or blended with crude petroleum oil any time during production; or
  - (b) Produces more than ten thousand (10,000) cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon.
- (11) ***"Inclination survey" means a survey performed to measure deviation from the true vertical, irrespective of direction, expressed in degrees.***
- (12) ***"NAD 83" means the North American Datum, 1983 version using feet units.***
- (13)~~(9)~~ "Oil" means petroleum.
- (14)~~(10)~~ "Oil well" means any well which produces one (1) barrel or more of oil to each ten thousand (10,000) cubic feet of natural gas.
- (15)~~(11)~~ "Plat" means a map, drawing, or print showing the location of a well.
- (16) ***"Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on Lambert Conformal Conic map projection with double standard parallels on the North American Datum, 1983 version, as established in 10 KAR 5:010.***
- (17) ***"True vertical" means the orientation of the well at ninety degrees (90°) from the horizontal plane at the surface elevation.***
- (18)~~(12)~~ "Unit" means any tract or tracts which the department has determined is underlaid by a pool or pools of oil and associated gas, and is not a "drilling unit" as defined in KRS 353.510(19).
- (19)~~(13)~~ "Well" means a borehole drilled or proposed to be drilled for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced.
- (20)~~(14)~~ "Well operator" means any person who proposes to or does locate, drill, operate, or abandon any well.
- (21)~~(15)~~ "Workable bed" means:
- (a) A coal bed actually being operated commercially,
  - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years, or

- (c) Any coal bed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through it.

**Signed by the Governor March 24, 2009.**