CHAPTER 21

(SB 186)

AN ACT relating to oil and gas production and reclamation.

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

➔SECTION 1. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section and Sections 2, 3, and 4 of this Act, a storage tank facility that is not being actively used and maintained shall be deemed abandoned if:

(a) The cabinet sends written notice, by certified mail, return receipt requested, to the address of the last known owner or operator of the facility or tank or to the registered agent of a corporate owner or operator; and

(b) The owner or operator fails to respond within thirty (30) days after receiving the notice indicating the intent to continue to use the tank or facility.

(2) Within thirty (30) days of the owner or operator's indication of intent to continue to use the tank or facility, the owner or operator shall restore the status of the tank or facility to active maintenance and shall implement a spill prevention, control, and countermeasure plan. If after thirty (30) days of an operator's indication of intent to continue to use the tank or facility, the operator fails to restore the status of the facilities to active maintenance, the cabinet shall deem the tank or facility abandoned.

➔SECTION 2. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Kentucky Abandoned Storage Tank Reclamation Program. The purpose of the program is to reclaim abandoned storage tank facilities in order to return the property to productive use. Reclamation of abandoned storage tank facilities shall include removing necessary tank infrastructure and removing primary and secondary sources of contamination of the land, air, and water. Abandoned storage tank facilities enrolled in the program shall be eligible for reclamation and clean up funds from the Kentucky abandoned storage tank reclamation fund.

(2) The Kentucky abandoned storage tank reclamation fund is hereby created as an interest bearing, restricted, agency account. The fund shall be administered by the cabinet. Interest credited to the account shall be retained in the account. Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section and Sections 1, 3, and 4 of this Act.

(3) Moneys in the fund shall be for carrying out the purpose provided in subsection (1) of this section including any administrative costs, set forth in this section and Sections 1, 3, and 4 of this Act. The fund may receive moneys from federal and state grants or appropriations, and from any other proceeds for the purposes of this section and Sections 1, 3, and 4 of this Act.

(4) Funds expended for costs incurred in reclaiming abandoned storage tank facilities shall be in accordance with the provisions of this section and after the cabinet deems that there is:

(a) No person identified or found with continuing legal responsibility for the abandoned storage tank facility; or

(b) Reclamation measures are necessary to respond to an imminent threat to the public health, safety, and environment.

(5) Reclamation measures paid for by the fund shall include the following:

(a) Removal and disposal of abandoned storage tank facilities; and

(b) Reclamation of lands affected by abandoned storage tank facilities including:

1. Removal of aboveground flow lines;

2. Removal or treatment of contaminated soil to no more than three (3) feet in depth;

3. Elimination of all berms, dikes, and other structures utilized as spill prevention, control, and countermeasure structures; and

4. Grading and seeding of the surface where the tank or tank battery was located.

(6) If during the course of removing and reclaiming an abandoned storage tank facility, the division observes evidence of soil contamination below three (3) feet depth, the division shall consult with the Department for Environmental Protection to determine whether further action is necessary to protect public health and the environment. Nothing contained in this section shall be construed to obligate the fund to provide additional moneys for removal or treatment of contaminated soil other than provided in subsection (5)(b)2. of this section.

(7) Any person performing reclamation measures pursuant to this section shall comply with applicable local, state, and federal laws and regulations.

(8) The cabinet shall have the authority to:

(a) Contract for services provided by and engage in cooperative projects with other government agencies for the remediation, clean-up, and disposal of abandoned storage tanks; and

(b) Enter into agreements with those government agencies to compensate those agencies with funds from the account; and

(c) Accept and deposit into the fund any federal, state, and other funds for the purposes of this section and Sections 7, 9, and 10 of this Act.

➔SECTION 3. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet and its authorized representatives, agents, and contractors shall have the right and authority to enter upon property threatened by an abandoned storage tank facility and to access any other property for the purpose of removal and reclamation of the abandoned storage tank facility if the cabinet makes a finding of fact that:

(a) An abandoned storage tank facility poses a threat to human health, safety, and the environment under subsection (4)(b) of Section 2 of this Act and is eligible to be enrolled in the Kentucky Abandoned Storage Tank Reclamation Program;

(b) The cabinet determines that action in the public interest should be taken to dispose of the abandoned storage tank facilities and to reclaim the lands threatened by the abandoned storage tank facilities; and

(c) 1. The owner or owners of the property are not known or are not readily available; or

2. The owner or owners will not give permission for the Commonwealth, political subdivisions, or their agents, employees, or contractors to enter upon the property.

(2) Prior to entry on the land for the purpose of conducting remediation, the cabinet shall give notice by mail to the all owners of the property, if known. If the owners are unknown, then the cabinet shall post notice upon the premises and shall advertise once in a newspaper of general circulation in the municipality or county in which the land where the abandoned storage tank facilities are located.

(3) Additionally, the cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon any property for the purpose of conducting field inspections or investigations to determine the existence and status of abandoned storage tank facilities and to determine the feasibility of removal and reclamation of the abandoned storage tank facility.

(4) Entry upon the land under this section shall be construed as an exercise of the Commonwealth's police power for the protection of the public health, safety, and general welfare. Entry shall not be construed as an act of condemnation of property or of trespass thereon.

(5) The cabinet may initiate, in addition to any other remedies provided in KRS Chapter 353, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work authorized under this section and Sections 1, 2, and 4 of this Act.

(6) Any person who intends to remove an abandoned storage tank facility shall:

(a) Notify the cabinet before undertaking the removal;

(b) Do so at his or her own risk and expense; and

(c) Bear sole responsibility for complying with all applicable local, state, and federal laws and regulations during the removal, disposal, and reclamation of the site.

(7) Nothing in this section shall be construed as an additional grant of authority for any person or entity other than the cabinet or the cabinet's agents to take action under this section and Sections 1, 2, and 4 of this Act.

➔SECTION 4. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall have the authority to recover actual and necessary expenditures, including administrative costs, reasonably incurred in carrying out the duties of this section and Sections 1, 2, and 3 of this Act from:

(a) The last owner or operator of record of the abandoned storage tank facility where fund moneys were expended; and

(b) Any other party legally responsible for causing or contributing to a threat to human health, safety, and the environment that the Commonwealth incurred costs or expenses under this section and Sections 1, 2, and 3 of this Act.

(2) The cabinet may initiate an action for reimbursement of costs in any court of competent jurisdiction. The recovery of any costs under this section and Section 3 of this Act shall be credited to the Kentucky Abandoned Storage Tank Reclamation Fund except for recovered administrative costs which shall be retained by the cabinet.

(3) The cabinet may not seek reimbursement from the landowner for costs incurred under this section and Section 3 of this Act unless the landowner qualifies as the last known owner or operator under subsection (1)(a) of this section or caused or contributed to a threat under subsection (1)(b) of this section.

(4) Expenditures of moneys from the fund for the purposes established subsection (4) and (5) of Section 2 of this Act shall be prioritized in the following order:

(a) Abandoned storage tank facilities that are an imminent threat to human health, safety, and the environment as evidenced by leaking tanks, berms, or dikes near dwellings, streams, rivers, water bodies, or other sensitive areas;

(b) Abandoned storage tank facilities that pose a threat to human health, safety, and the environment as evidenced by the facilities proximity to structures, streams, rivers, water bodies, or other sensitive areas; and

(c) Abandoned storage tank facilities that pose a potential threat to human health, safety, and the environment.

➔SECTION 5. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) An operator employing a high-volume horizontal fracturing treatment shall provide notice required under subsection (3) of this section to each surface property owner within one thousand (1,000) feet of the surface location of the proposed well, at least twenty (20) days prior to commencement of a high-volume horizontal fracturing treatment of a horizontal well. For purposes of this subsection, a surface property owner is the person who is assessed for the purpose of taxes imposed according to the records of the property valuation administrator of the county where the property is located.

(2) The operator shall, for the purpose of giving notice, secure from the property valuation administrator's office, the names of persons entitled to notice under this section. Notice to the persons indicated as surface property owners in the office of the property valuation administrator shall be conclusive evidence that the operator has met the requirements of this section.

(3) The notice to surface property owners shall include:

(a) The name and address of the operator;

(b) The surface location of the proposed well; and

(c) The name and location of the cabinet office where the permit and related documents are available for public inspection and, if the documents are available electronically, the Web site where the permit and related documents may be inspected.

➔SECTION 6. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) At least twenty (20) days prior to the commencement of a high-volume horizontal fracturing treatment on a deep horizontal well, an operator shall conduct a baseline water quality test of each down-gradient surface water impoundment or water supply from a groundwater source that is used for domestic, agriculture,

industrial, or other legitimate use located within one thousand (1,000) feet of the surface location of the proposed deep horizontal well. Between three (3) and six (6) months following the completion of the deep horizontal well, a subsequent water quality test shall be conducted of the water supply where a baseline sample was collected.

(2) The water quality tests shall be conducted by a laboratory certified by the cabinet for drinking water quality sampling, and the test analysis shall be submitted to the Division of Oil and Gas and to the water supply owner within thirty (30) days of the receipt of the analysis. Each set of samples collected under this section shall include analysis for:

(a) pH;

(b) Total dissolved solids, dissolved methane, dissolved propane, dissolved ethane, alkalinity, and specific conductance;

(c) Chloride, sulfate, arsenic, barium, calcium, chromium, iron, magnesium, selenium, cadmium, lead, manganese, mercury, and silver;

(d) Surfactants;

(e) Benzene, toluene, ethyl benzene, and xylene; and

(f) Gross alpha and beta particles to determine the presence of any naturally occurring radioactive materials.

(3) The Division of Oil and Gas shall develop a form for an operator to document a water supply owner's permission to collect a water sample. An operator is exempt from the requirements of this section if a water supply owner refuses to grant access despite an operator's good faith efforts to obtain consent to acquire the necessary water quality samples. An operator shall document the good faith efforts used to seek consent from the water supply owner who refused access to conduct the water quality sampling. The operator shall submit the documented good faith efforts to the Division of Oil and Gas.

➔SECTION 7. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) A vendor or service provider performing any part of a high-volume horizontal fracturing treatment shall furnish the operator with the information required by subsection (2) of this section, as applicable, and with any information as needed for the operators to comply with this section. The information shall be provided as soon as possible and in no case later than forty-five (45) days after the completion of a high-volume horizontal fracturing treatment.

(2) Within ninety (90) days of concluding a high-volume horizontal fracturing treatment, the operator of the horizontal well shall complete the chemical disclosure registry form and post the form on the chemical disclosure registry. The following information shall be required to be furnished:

(a) Operator's name;

(b) The date of the high-volume horizontal fracturing treatment;

(c) The county in which the well is located;

(d) The API number for the well;

(e) The well name and number;

(f) The longitude and latitude of the wellhead;

(g) The true vertical depth of the well;

(h) The total water volume used;

(i) Each chemical additive used in the fracturing treatment, including the chemical abstract service number added, if applicable;

(j) The maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid, if applicable; and

(k) The total amount of proppant used, if applicable.

(3) A vendor, service provider, or operator shall not be required to:

(a) Disclose any trade secrets under subsection (2)(j) of this section to the chemical disclosure registry;

(b) Disclose chemicals that are not disclosed to it by a third-party manufacturer of the chemicals; or

(c) Disclose chemicals that:

1. Occur incidentally or are otherwise unintentionally present in trace amounts;

2. May be the incidental result of a chemical reaction or chemical process; or

3. May be constituents of naturally occurring materials that become part of a high-volume horizontal fracturing treatment, where the chemicals are unknown to the vendor, service provider, or operator.

➔SECTION 8. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) If the vendor, service provider, or operator of a high-volume horizontal fracturing treatment claims that the volume of a chemical or relative concentration of chemical is a trade secret, the operator of the horizontal well shall indicate that claim on the chemical disclosure registry form and, as applicable, the vendor, service provider, or operator shall submit a request to the director to designate the information as a trade secret.

(2) At the time of claiming entitlement to trade secret protection, the vendor, service provider, or operator shall file with the director the following information on a form prescribed by the division. The form shall include:

(a) The claimant's name, authorized representative, mailing address, and phone number;

(b) The specific information claimed to be entitled to trade secret protection;

(c) Whether there has been a previous determination by a court, or by a governmental agency that the information is or is not entitled to confidential treatment; and

(d) The measures taken by the vendor, service provider, or operator to protect the confidentiality of the information.

(3) Any information claimed to be a trade secret shall be disclosed by the director only:

(a) In accordance with this section and Sections 9 and 10 of this Act; or

(b) If ordered by a court to do so.

(4) Vendors, service providers, and operators shall identify the volume and relative concentration of any chemicals used in the high-volume horizontal fracturing treatment that are claimed to be a trade secret to the cabinet. The cabinet shall release that information to any health professional who request the information if:

(a) The request is in writing;

(b) The health professional provides a written statement of the need for the information; and

(c) The health professional executes a confidentiality agreement.

(5) The health professional's written statement of need under subsection (4)(b) of this section shall be a statement that the health professional has a reasonable basis to believe that:

(a) The information is needed for purposes of diagnosis or treatment of an individual; and

(b) The individual being diagnosed or treated may have been exposed to the chemical concerned.

(6) The confidentiality agreement shall state:

(a) The health professional shall not use the information for purposes other than the health needs asserted in the written statement of need; and

(b) The health professional shall otherwise maintain the information as confidential.

(7) Where a health professional determines that a medical emergency exists, and the amount or mixture of any chemicals claimed to be a trade secret are necessary for emergency treatment, the director shall:

(a) Immediately direct the vendor, service provider, or operator, as applicable, to disclose the information to the health professional upon verbal acknowledgement by the health professional that:

1. The information shall not be used for purposes other than the health needs asserted; and

2. The health professional shall otherwise maintain the information as confidential; and

(b) Request a written statement of need and a confidentially agreement from all health professionals to whom the information regarding the concentration or mixture of any chemicals claimed to be a trade secret was disclosed, as soon as circumstances permit.

(8) Information disclosed to a health professional under this section shall not be construed as publicly available by virtue of the disclosure of the information to a health care professional. Release of the information under this section shall not be construed as a waiver of a trade secret claim by the party who has asserted that claim.

(9) The division shall develop a form for the vendor, service provider, or operator to claim trade secret status under subsections (1) and (2) of this section and a standard confidentiality agreement for medical professionals under subsections (5), (6), and (7) of this section.

➔SECTION 9. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) The director shall direct a vendor, service provider, or operator, as applicable, to immediately disclose information regarding the concentration or mixture of a chemical claimed to be a trade secret to the extent that the disclosure is necessary to assist in responding to an emergency spill or discharge, except that the individuals receiving the information shall not disseminate the information further. In addition, the director upon request may disclose the specific information concerning the volume of a chemical or relative concentration of chemicals, or both, which are claimed to be a trade secret for the purpose of responding to an emergency spill or discharge if request is made by letter or electronic mail from:

(a) The Kentucky Department for Environmental Protection;

(b) The Kentucky Department for Natural Resources;

(c) The Kentucky Department for Public Health; or

(d) A local public health department.

(2) Any information disclosed under this section shall not be construed as publicly available by virtue of the disclosure to any entity listed in this section, and release of the information under this section shall not be construed as a waiver of a trade secret claim by the party who has asserted that claim.

➔SECTION 10. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED TO READ AS FOLLOWS:

(1) The director shall notify the vendor, service provider, or operator, as applicable, within ten (10) days of receipt of a request pursuant to the Kentucky Open Records Act for disclosure of information for which trade secret status has been asserted. The director may request additional information from the vendor, service provider, or operator, as applicable, to determine whether to grant or reject the request for disclosure.

(2) If the cabinet determines that the information is entitled to confidential treatment and that determination is challenged pursuant to the provisions of the Kentucky Open Records Act, the director may call upon the owner or operators to assist in the defense of that determination.

(3) If the cabinet makes a determination that the information is not entitled to confidential treatment, notwithstanding KRS 61.870 to 61.884, the director shall:

(a) Notify the vendor, service provider, or operator, as applicable, who asserted the trade secret status; and

(b) Delay release of the information for a period of ten (10) working days after mailing the notice.

(4) Judicial review of any determination under this section shall be undertaken in accordance with the Kentucky Open Records Act, and administrative review of the determination to release or to withhold information shall not be required.

➔Section 11. 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 KRS 353.590***(28)*** ~~[(24)]~~.

(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) of this section, 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) of this section, 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 12. KRS 353.510 is amended to read as follows:

As used in KRS 353.500 to 353.720, unless the context otherwise requires:

(1) "Department" means the Department for Natural Resources;

(2) "Commissioner" means the commissioner of the Department for Natural Resources;

(3) "Director" means the director of the Division of Oil and Gas as provided in KRS 353.530;

(4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;

(5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;

(6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive ***or receive,*** without waste***,*** the oil and gas in and under ***or produced from a tract or tracts in which the person owns or controls an interest, or proceeds thereof*** ~~[his tract or tracts, or the equivalent thereof]~~;

(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined in subsection (7) of this section as oil;

(9) "Pool" means***:***

(a) An underground reservoir containing a common accumulation of oil or gas or both***; or***

(b) An area established by the commission as a pool.

Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" ~~[as used herein]~~;

(10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools;

(11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts;

(12) "Abandoned," when used in connection with a well or hole, means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of oil or gas or for the injection or disposal of fluid therein;

(13) "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) A coal bed which, from outcrop indications or other definite evidence, proves to the satisfaction of the commissioner to be workable, and which, when operated, will require protection if wells are drilled through it;

(14) "Well" means a borehole***:***

(a) Drilled ***or proposed to be drilled***~~[, shaft driven, or hole dug or such proposed or otherwise used]~~ for the purpose of producing ***gas or oil;***

(b) ***Through which gas or oil***~~[natural gas or petroleum, or one through which natural gas or petroleum]~~ is being produced***; or***

(c) ***Drilled or proposed to be drilled***~~[, or]~~ for the purpose of injecting any water, gas, or other fluid therein or ~~[one]~~into which any water, gas, or other fluid is being injected;

(15) "Shallow well" means any well drilled and completed at a depth ***of six thousand (6,000)***~~[less than four thousand (4,000)]~~ feet ***or less*** except, in the case of any well drilled and completed east of longitude line 84 degrees 30'; shallow well means any well drilled and completed at a depth ***of six thousand (6,000)***~~[less than four thousand (4,000)]~~ feet or above the base of the lowest member of the Devonian Brown Shale, whichever is the deeper in depth;

(16) "Deep well" means any well drilled and completed below the depth ***of six thousand (6,000) feet or, in case of a well located east of longitude line 84 degree 30', a well drilled and completed at a depth below six thousand (6,000) feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper***~~[herein provided for a shallow well]~~;

(17) "Operator" means***:***

(a) ***For a deep well,*** any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others**.**~~[;]~~ In the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as ***the royalty owner***~~["operator"]~~ to the extent of ***the prevailing royalty in***~~[seven-eighths (7/8) of]~~ the oil and gas in that portion of the pool underlying the tract owned by ***the***~~[such]~~ owner, and as ***operator***~~["royalty owner"]~~ as to ***the remaining***~~[one-eighth (1/8)]~~ interest in such oil and gas**.**~~[; and]~~ In the event the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool; ***and***

(b) ***For a shallow well, any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas therefrom, either for himself, or herself or for himself or herself and others. If there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as operator to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by the owner, and as a royalty owner as to the one-eighth (1/8) interest in the oil and gas. If the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as operator as to the pool;***

(18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that ***the***~~[such]~~ owner is not an operator as defined in subsection (17) of this section;

(19) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum~~[recoverable]~~ oil or gas ***reasonably recoverable*** in ***the***~~[such]~~ area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, ***the***~~[such]~~ area shall be a drilling unit;

(20) "Underground source of drinking water" means those subsurface waters identified as ~~[such]~~in regulations promulgated by the department which shall be consistent with the definition of underground source of drinking water in regulations promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42 U.S.C. secs. 300(f) et seq.;

(21) "Underground injection" means the subsurface emplacement of fluids by well injection but does not include the underground injection of natural gas for purposes of storage;

(22) "Endangerment of underground sources of drinking water" means underground injection which may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and if the presence of ***the***~~[such]~~ contaminant may result in ***the***~~[such]~~ system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons;

(23) "Class II well" means wells which inject fluids:

(a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; and

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure;

(24) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state***;***

(25) "Horizontal well" means a well, the wellbore of which is initially drilled on a vertical or directional plane and which is curved to become horizontal or nearly horizontal, in order to parallel a particular geological formation and which may include multiple horizontal or stacked laterals;

(26) "Vertical well" means a well, the wellbore of which is drilled on a vertical or directional plane into a formation and is not turned or curved horizontally to allow the wellbore additional access to the oil and gas reserves in the formation;

(27) "Prevailing royalty" means the royalty rate or percentage that the commission determines is the royalty most commonly applicable with regard to the tract or unit in the issue. The royalty rate set by the commission shall not be less than one-eighth (1/8) or twelve and one-half percent (12.5%);

(28) "Best management practices" means demonstrated practices intended to control site run-off and pollution of surface water and groundwater to prevent or reduce the pollution of waters of the Commonwealth;

(29) "Abandoned storage tank facility" means any aboveground storage tank or interconnected grouping of tanks that is no longer being actively used and maintained in conjunction with the production and storage of crude oil or produced water;

(30) "Spill prevention, control, and countermeasure structures" means containment structures constructed around a storage facility to contain facility discharges;

(31) "Landowner" means any person who owns real property where an abandoned storage tank facility is currently located;

(32) "Chemical Abstracts Service" means the division of the American Chemical Society that is the globally recognized authority for information on chemical substances;

(33) "Chemical abstracts service number" means the unique identification number assigned to a chemical by the Chemical Abstracts Service;

(34) "Chemical" means any element, chemical compound, or mixture of elements or compounds that has its own specific name or identity, such as a chemical abstracts service number;

(35) "Chemical disclosure registry" means the chemical registry known as FracFocus developed by the Groundwater Protection Council and the Interstate Oil and Gas Compact Commission. If that registry becomes permanently inoperable, the chemical disclosure registry shall mean another publicly accessible Web site that is designated by the commissioner;

(36) "Division" means the Kentucky Division of Oil and Gas;

(37) "Emergency spill or discharge" means an uncontrolled release, spill, or discharge associated with an oil or

gas well or production facility that has an immediate adverse impact to public health, safety, or the environment as declared by the secretary of the cabinet;

(38) "Health professional" means a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the Commonwealth of Kentucky;

(39) "High-volume horizontal fracturing treatment" means the stimulated treatment of a horizontal well by the pressurized application of more than eighty thousand (80,000) gallons of water, chemical, and proppant, combined for any stage of the treatment or three hundred twenty thousand (320,000) gallons in the aggregate for the treatment used to initiate or propagate fractures in a geological formation for the purpose of enhancing the extraction or production of oil or natural gas;

(40) "Proppant" means sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed;

(41) "Total water volume" means the total quantity of water from all sources used in a high-volume hydraulic fracturing treatment;

(42) "Trade secret" means information concerning the volume of a chemical or relative concentration of chemicals used in a hydraulic fracturing treatment that:

(a) Is known only to the hydraulic fracturing treatment's owners, employees, former employees, or persons under contractual obligation to hold the information in confidence;

(b) Has been perfected and appropriated by the exercise of individual ingenuity which gives the hydraulic fracturing treatment's owner an opportunity to retain or obtain an advantage over competitors who do not know the information; and

(c) Is not required to be disclosed or otherwise made available to the public under any federal or state law or administrative regulation; and

(43) "Cabinet" means the Energy and Environment Cabinet.

➔Section 13. 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) ***Applications for each deep well shall be assessed a fee according to the following schedules:***

(a) For a vertical deep well:

1. With a total vertical depth of seven thousand (7,000) feet or less, the fee shall be five hundred dollars ($500); and

2. With a total vertical depth greater than seven thousand (7,000) feet, the fee shall be six hundred dollars ($600); and

(b) For a horizontal deep well:

1. With a total measured well depth of ten thousand (10,000) feet, or less, the fee shall be five thousand dollars ($5,000);

2. With a total measured well depth greater than ten thousand (10,000) feet, the fee shall be six thousand dollars ($6,000); and

3. Five hundred dollars ($500) for each additional lateral.

(4) For a horizontal deep well, each additional deep horizontal well located on the same well pad shall be assessed the following fee:

(a) Three thousand dollars ($3,000) for a total measured well depth up to ten thousand (10,000) feet; and

(b) Four thousand dollars ($4,000) for a total measured well depth greater than ten thousand (10,000) feet.

(5) 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.

(6)~~[(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.

(7)~~[(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. ***Bonds for deep wells are posted for the purpose of ensuring well plugging and reclamation of disturbed areas.***~~[Except for bonds for well depths greater than four thousand (4,000) feet,]~~ The bond ***for plugging shallow wells*** shall be posted in accordance with the following schedule:

Well Depth	Bond Amount
0 to 500 feet	$500.00
501 feet to 1,000 feet	$1,000.00
1,001 feet to 1,500 feet	$1,500.00
1,501 feet to 2,000 feet	$2,000.00
2,001 feet to 2,500 feet	$2,500.00
2,501 feet to 3,000 feet	$3,000.00
3,001 feet to 3,500 feet	$3,500.00
3,501 feet to 4,000 feet	$4,000.00
4,001 feet ***to 4,500 feet***~~[and deeper]~~	$5,000.00
4,501 feet to 5,000 feet	***$6,000.00***
5,001 feet to 5,500 feet	***$7,000.00***
5,501 feet to 6,000 feet	***$8,000.00***

(8) Plugging and reclamation bonds for vertical deep wells shall be twenty-five thousand dollars ($25,000). However, the commission may establish a higher bonding amount for vertical deep wells if the anticipated plugging and reclamation costs exceed the minimum bonding amounts established in this section.

(9) The minimum amount of plugging and reclamation bond for a horizontal deep well shall be forty thousand dollars ($40,000). However, the commission may establish a bond amount greater than forty thousand dollars ($40,000) if the anticipated plugging and reclamation costs exceed the minimum bond.

~~[(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.]~~

(10) ***(a)*** ~~[(7)]~~ All bonds required to be posted under this section ***for plugging shallow wells*** shall:

1. ~~[(a)]~~ Be made in favor of the Department for Natural Resources;

2. ~~[(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

3. ~~[(c)]~~ Remain in effect until the plugging of the well is approved by the department, or the bond is released by the department***.***

(b) All bonds required to be posted under this section for plugging deep wells shall:

1. Be made in favor of the Department for Natural Resources;

2. Be conditioned that the wells, upon abandonment, shall be plugged and the disturbed area reclaimed in accordance with the statutes and the administrative regulations of the department and that all records required by the department be filed as specified; and

3. Remain in effect until the plugging of the well and the reclamation of the disturbed area is approved by the department or the bond is released by the department.

(11) ~~[(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.

(12) ~~[(9)]~~ (a) Any qualified ***shallow*** 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; and
4. Five hundred one (501) or more wells require a one hundred thousand dollar ($100,000) bond.

(b) Any nonqualified ***shallow*** 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; and
2. One hundred one (101) or more wells require a one hundred thousand dollar ($100,000) bond.

(13) ~~[(10)]~~ To qualify for a blanket bond ***for a shallow well*** under the tiered structure set forth in subsection ***(12)*** ~~[(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.

(14) ~~[(11)]~~ In addition to the requirements set forth in subsection ***(15)*** ~~[(12)]~~ of this section, proof of financial ability set forth in subsection ***(13)*** ~~[(10)]~~(c) 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).

(15) ~~[(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.

(16) ~~[(13)]~~ An operator shall not be eligible for blanket bonding if ***the operator has***:

(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.

(17) Any deep well operator, in lieu of an individual bond, may file with the department a blanket bond according to the following:

(a) One (1) to ten (10) vertical deep wells require a two hundred thousand dollars ($200,000) bond; and

(b) One (1) to ten (10) horizontal deep wells require a three hundred twenty thousand dollar ($320,000) bond.

(18) ~~[(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.

(19) ~~[(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.

(20) ~~[(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 individual well bond. 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.

(21) ~~[(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.

(22) ~~[(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 ***(28)*** ~~[(24)]~~ 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.

(23) ~~[(19)]~~ The bond amounts prescribed by subsection ***(7)*** ~~[(5)]~~ of this section shall be applicable only to permits issued upon and after July 15, 2006. All bonds posted for permits issued prior to July 15, 2006, shall remain in full force and effect for the duration of the permits.

(24) ~~[(20)]~~ The blanket bond amounts prescribed by subsection ***(12)*** ~~[(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 ***(12)***~~[(9)]~~ of this section on any wells drilled subsequent to July 15, 2006, until the blanket bond has reached the level prescribed by subsection ***(12)***~~[(9)]~~ of this section.

(25)~~[(21)]~~ 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.

(26)~~[(22)]~~ If the requirements 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.

(27)~~[(23)]~~ 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.

(28)~~[(24)]~~ All sums received under 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.

(29)~~[(25)]~~ 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.

(30)~~[(26)]~~ 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.

(31)~~[(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) 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) 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 14. 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***(7)***~~[(5)]~~ and ***(12)***~~[(9)]~~;

(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 15. KRS 353.5901 is amended to read as follows:

(1) ~~[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,]~~A well operator shall submit to the department an operations and reclamation ***plan***~~[proposal]~~ at the time of filing an application for permit to drill, deepen, or reopen a well. The ***plan***~~[proposal]~~ shall be filed on forms provided by the department and shall include:

(a) A ***narrative description of those best management practices intended to be employed***~~[proposal]~~ to prevent ***pollution,*** erosion***,***~~[of]~~ and sedimentation from the well site and all disturbed areas, including roads***. The description shall be updated when the best management practices utilized on site differ from those described in the plan***;

(b) A narrative description of the location of all areas to be disturbed, including the location of roads, gathering lines, the well site, tanks and other storage facilities, and any other information that may be required by the department. Accompanying this narrative description shall be a plat depicting the location on the land of all of these disturbances or facilities; ***and***

(c) ~~[A signed agreement by the surface owners of all disturbed areas to the operations and reclamation proposal; and~~

~~(d)]~~Any additional information that the department may require.

(2) ***The plan shall include at a minimum a narrative describing the following categories:***

(a) Site plans;

(b) Construction practices to be used;

(c) Reclamation methods to be used after well completion;

(d) Maintenance of the reclaimed site; and

(e) Site closure describing plugging, abandonment, and reclamation procedures.

(3) The department shall review and approve the operations and reclamation plan prior to permit issuance in cases where there has not been a severance of the ownership of the oil and gas from the ownership of the surface to be disturbed.

(4) In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface and the surface owners of all disturbed areas have not signed agreements with the well operator agreeing to the operations and reclamation ***plan***~~[proposal]~~, at the time of filing the application the well operator shall cause to be delivered to the surface owners of all disturbed areas who have not agreed to the

operations and reclamation ***plan***~~[proposal]~~, by certified mail, return receipt requested:

(a) A copy of the operations and reclamation ***plan***~~[proposal]~~ required by paragraph (a) of subsection (1) of this section, and the narrative description of land disturbances and plat required by paragraph (b) of subsection (1) of this section; and

(b) A notice to read as follows: "If you do not agree with the proposed use of your land by the well operator, the well operator may request mediation of your dispute by the General Counsel's Office of the Department for Natural Resources. If mediation is requested, and you decide to participate, each party to the mediation will be charged one hundred dollars ($100) to help cover the cost of mediation. You will be notified of the time and place for mediation, if the well operator chooses mediation, and of your right to participate."

The certified mail receipt, when returned, shall be filed by the well operator with the department and made part of the permit application.

(5)~~[(3)]~~ If the well operator has been unable to reach agreement with the surface owners of all areas to be disturbed 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 permit required by this chapter shall not be issued until the dispute has been referred to mediation by the General Counsel's Office of the Department for Natural Resources, and mediation has been concluded either by agreement between the parties or by a report of the mediator, in accordance with subsection ***(6)***~~[(4)]~~ of this section.

(6)~~[(4)]~~ The well operator may request mediation any time after filing the permit application, and all parties participating in the mediation shall pay a nonrefundable fee of one hundred dollars ($100) to the Kentucky State Treasurer, which shall be for the sole use of the department and shall be in addition to any money appropriated by the General Assembly for the use of the department. ***The department may waive the mediation fee for surface owners who submit verifiable proof of financial inability to pay.*** The department shall notify the well operator and all surface owners of areas to be disturbed by drilling who have not agreed to the operation and reclamation plan of the date and time mediation shall be conducted by certified mail, return receipt requested. The department shall conduct mediation at the site proposed to be disturbed within fifteen (15) days from the date requested, if practicable. At the mediation, the mediator will attempt to facilitate an agreement between the well operator and the surface owner. If an agreement is not forthcoming after mediation, the mediator shall, within five (5) days after mediation, issue a report to the director of the Division of Oil and Gas recommending that the director:

(a) Accept the ***plan***~~[proposal]~~ as submitted by the well operator; or

(b) Accept the ***plan***~~[proposal]~~ with modifications set forth by the mediator.

(7)~~[(5)]~~ If an agreement between the well operator and the surface owners of all disturbed areas is not forthcoming after mediation, the mediator shall consider the following factors as to the reasonable use of the surface by the well operator in issuing a report to the director~~[, which recommendations shall become permit conditions]~~:

(a) The location of roads, gathering lines, and tank batteries;

(b) The timing of the operation, considering seasonal uses of the land by the surface owner and the need of the well operator to drill expeditiously;

(c) The impact on the other uses of the land by the surface owner, including the location of timber, houses, barns, ponds, crops, and other improvements;

(d) Whether the ***plan***~~[proposal]~~ includes a plan for timely, effective reclamation of all disturbed areas; and

(e) Any other information deemed appropriate by the mediator.

(8)~~[(6)]~~ The director shall act upon the recommendation of the mediator within five (5) days of the receipt of the mediation report.

➔Section 16. KRS 353.651 is amended to read as follows:

The following provisions of this section ***and the administrative regulations promulgated pursuant thereto*** shall apply to any ***vertical*** deep well ***and any horizontal deep well as indicated***:

(1) Drilling units ***for vertical deep wells***:

(a) The commission shall, after notice and a hearing, to be conducted in accordance with KRS Chapter

13B, regulate the drilling and location of ***vertical deep*** wells in ***a*** ~~[any]~~ pool and the production therefrom so as to prevent reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counterdrainage) so that each owner in a pool shall have the right and opportunity to recover his ***or her*** fair and equitable share of the recoverable oil and gas in ***the*** ~~[such]~~ pool***;*** ~~[.]~~

(b) For the prevention of waste, to protect and enforce the correlative rights of the owners in a pool, and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the commission shall, after notice and a hearing, to be conducted in accordance with KRS Chapter 13B, establish drilling units for ***vertical deep wells in*** each pool. The spacing of ***vertical deep*** wells in proved oil and gas fields shall be governed by administrative regulations promulgated for that particular field ***or other administrative regulation promulgated by the commission***. ***Vertical deep*** wells drilled in areas not covered by special field administrative regulations shall be governed by statewide administrative regulations promulgated by the commission ***or orders of the commission issued after a hearing;*** ~~[.]~~

(c) Each ***vertical deep*** well permitted to be drilled ***in*** ~~[upon]~~ any drilling unit shall be drilled in accordance with***:***

1. The administrative regulations promulgated by the commission***;*** and ~~[in accordance with]~~

2. A spacing pattern fixed by the commission for the ***well or the*** pool in which the ***vertical deep*** well is located, ***as applicable,*** with any exceptions that may be reasonably necessary where it is shown, in accordance with administrative regulations promulgated by the commission, that the unit is partly outside the pool or for some other reason a well otherwise located on the unit would not be likely to produce in paying quantities, or topographical conditions are such as to make the drilling at the location unduly burdensome***, or other similar cause***. Whenever an exception is granted, the commission shall take action as will offset any advantage which the person securing the exception may have over other owners by reason of the drilling of the well as an exception***;*** ~~[.]~~

(d) No drilling unit established by the commission shall be smaller than the maximum area which can be drained efficiently by one (1) ***vertical*** deep well so as to produce the reasonable maximum recoverable oil or gas in ***the*** ~~[such]~~ area, unless an exception is granted in accordance with administrative regulations promulgated by the commission***; and*** ~~[.]~~

(e) An order establishing ***a*** drilling ***unit for a vertical deep well*** ~~[units]~~ may be modified, altered, extended, amended, or vacated by the commission after notice and hearing as prescribed above.

(2) ***Drilling units for horizontal deep wells:***

(a) For the prevention of waste and for the protection and enforcement of the correlative rights of the owners in a pool, the commission shall, after notice and hearing conducted in accordance with KRS Chapter 13B and with the administrative regulations of the commission, establish drilling units for horizontal deep wells. Drilling units shall be based on the information provided to or requested by the commission;

(b) Each horizontal deep well permitted to be drilled on a drilling unit established by the commission shall be drilled in accordance with the administrative regulations promulgated by the commission and any orders of the commission; and

(c) The establishment of any horizontal deep well unit shall be on terms that are fair, reasonable, equitable, and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and the royalty owners based on the evidence before the commission.

(3) Pooling of interests in drilling units:

(a) When two (2) or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, and after the commission has given notice to all persons reasonably known to own an interest in the oil or gas in the drilling unit, and after a hearing conducted in accordance with KRS Chapter 13B, the commission shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for the sharing ***of*** production therefrom. Each pooling order shall be upon terms and conditions which are

just and reasonable***;*** ~~[.]~~

(b) All operations, including, but not limited to, the commencement, drilling, or operation of a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of those operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from the tract by a deep well drilled thereon***;*** ~~[.]~~

(c) Any pooling order under the provisions of subsection ***(3)*** ~~[(2)]~~ of this section shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate ***the*** ~~[such]~~ deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, and abandoning the deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the acreage in the pooled tracts owned or under lease to each owner; and shall make provision for payment of all reasonable costs thereof, including reasonable charge for supervision and for interest on past due accounts, by all those who elect to participate therein. Upon the application of any operator having an interest in the drilling unit, the person or persons selected to drill and operate the deep well shall be determined by competitive bids***;*** ~~[.]~~

(d) Upon request, any pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in the risk and cost of the drilling of a deep well may elect to surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be determined by the commission; or to participate in the drilling of the deep well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the commission to be just and reasonable***;*** ~~[.]~~

(e) If an operator owning an interest in a pooled drilling unit elects not to participate in the risk and cost of drilling of a deep well thereon, and another operator owning an interest therein, shall drill and operate, or pay the costs of drilling and operating a deep well as provided in the commission's order, then the operating owner shall be entitled to the share of production from the tracts or portions thereof accruing to the interest of the nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or portions thereof, or exclusive of ***the prevailing royalty*** ~~[one-eighth (1/8)]~~ of the production attributable to all unleased tracts or portions thereof, until the market value of the nonparticipating owner's share of the production, exclusive of any royalty, overriding royalty or ***the prevailing royalty*** ~~[one-eighth (1/8)]~~ of production, equals ***three (3)*** ~~[two (2)]~~ times the share of the costs payable by or charged to the interest of the nonparticipating owner***; and*** ~~[.]~~

(f) If a dispute shall arise as to the costs of drilling and operating a deep well, the commission shall determine and apportion the costs, within ninety (90) days from the date of written notification to the commission of the existence of such dispute.

(4) ~~[(3)]~~ This section shall not apply to wells drilled, deepened, or reopened for the injection of water, gas, or other fluids into any subsurface formation.

➔Section 17. KRS 353.652 is amended to read as follows:

(1) Upon the application of any operator in a deep well pool productive of oil or gas, or both, and other minerals which may be associated and produced therewith and after notice given by the commission to all persons reasonably known to own an interest in the oil or gas in the pool, and after a hearing conducted in accordance with KRS Chapter 13B, the commission may enter a final order requiring the unit operation of a pool or of any portion or combinations thereof within a field. The unit operation shall be in connection with a program designed to avoid the drilling of unnecessary wells, or otherwise to prevent waste, or to increase the ultimate recovery of the unitized minerals by additional recovery methods. The final order shall provide for the unitization of separately-owned tracts and interests within the pool or pools, but only after finding that:

(a) The order is reasonably necessary for the prevention of waste;

(b) The proposed plan of unitized operation will increase the ultimate recovery of oil or gas, or both, from the pool and will be economically feasible;

(c) The production of oil or gas, or both, from the unitized pool can be allocated in a manner to insure the

recovery by all owners of their just and equitable share of the production; and

(d) A contract incorporating the unitization agreement has been signed or in writing ratified or approved by the owners of at least seventy-five percent (75%) in interest ***in the pool*** as costs are shared under the terms of the order and by seventy-five percent (75%) in interest ***in the pool*** as production is to be allocated of the royalty in the unit area, and a contract incorporating the required arrangements for operations has been signed or in writing ratified or approved by the owners of at least seventy-five percent (75%) in interest ***in the pool*** as costs are shared, and the commission has made a finding to that effect either in the final order or a supplemental order.

(2) The final order requiring the unit operation shall designate one (1) operator as unit operator and shall also make provision for the proportionate allocation to all operators of the costs and expenses of the unit operation, including a reasonable charge for supervision, which allocation shall be in the proportion that the separately-owned tracts share in the production from the unit. In the absence of an agreement entered into by the operators and filed with the commission providing for sharing the costs of capital investments in wells and physical equipment, and intangible drilling costs, the commission shall provide by order for the sharing of the costs in the same proportion as the costs and expenses of the unit operation, but any operator who has not consented to the unitization shall not be required to contribute to the costs or expenses of the unit operation, or to the cost of capital investment in wells and physical equipment, and intangible drilling costs, except out of the proceeds from the sale of the production accruing to the interest of the operator exclusive of any royalty or overriding royalty interest.

(3) The commission, after notice and hearing as provided above may from time to time by entry of a new or amending final order enlarge the unit area by approving agreements adding to the area a pool or any portion or combinations thereof not previously included. Any new or amended final order shall not become effective unless and until:

(a) All of the terms and provisions of the unitization agreement relating to the extension or enlargement of the unit area or to the addition of pools or portions or combinations thereof to unit operations have been fulfilled and satisfied and evidence thereof has been submitted to the commission; and

(b) The extension or addition effected by the order has been agreed to in writing by the owners of at least seventy-five percent (75%) in interest ***in the pool*** as costs are shared in the pool or pools or portions or combinations thereof to be added to unit operations by the order and by seventy-five percent (75%) in interest ***in the pool*** as production is to be allocated of the royalty owners in the pool, pools, portions, or combinations and evidence thereof has been submitted to the commission.

(4) Any agreement, in providing for allocation of production from the unit area, shall first allocate to each pool or added portion a portion of the total production of oil and gas, or both, from all pools affected within the area, as enlarged, the allocation to be in proportion to the contribution which added pool or portions or extensions thereof are expected to make, during the remaining course of unit operations, to the total production of oil or gas, or both, of the unit as enlarged. The remaining portion of unit production shall be allocated among the separately-owned tracts within the previously established unit area in the same proportions as those specified prior to the enlargement.

➔Section 18. 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***(7)***~~[(5)]~~ or ***(12)***~~[(9)]~~. Notwithstanding the provisions of KRS 353.590(2), no fee shall be required

for any such well.

➔Section 19. KRS 353.737 is amended 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 KRS Chapter 322 and shall be provided in addition to the plat accompanying the application for permit, which is required under KRS 353.590***(6)***~~[(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 KRS 353.010.

(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 20. This section shall be known as the Kentucky Oil and Gas Regulatory Modernization Act of 2015.

Signed by Governor March 19, 2015.