

**CHAPTER 94****( SB 249 )**

AN ACT relating to oil and gas hearings.

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

➔Section 1. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
  - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
  - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
  - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
  - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
  - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
  - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
  - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
  - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
  - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
  - (a) Finance and Administration Cabinet
    1. Higher Education Assistance Authority
      - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
      - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
    2. Department of Revenue
      - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
      - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
  - (b) Cabinet for Health and Family Services

## ACTS OF THE GENERAL ASSEMBLY

1. Office of Health Policy
    - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
    - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
  2. Department for Community Based Services
    - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
  3. Department for Income Support
    - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
  4. Department for Medicaid Services
    - a. Administrative appeal hearings following an external independent third-party review of a Medicaid managed care organization's final decision that denies, in whole or in part, a health care service to an enrollee or a claim for reimbursement to the provider for a health care service rendered by the provider to an enrollee of the Medicaid managed care organization, conducted under authority of KRS 205.646
- (c) Justice and Public Safety Cabinet
1. Department of Kentucky State Police
    - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
  2. Department of Corrections
    - a. Parole Board hearings conducted under authority of KRS Chapter 439
    - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
    - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
  3. Department of Juvenile Justice
    - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) Energy and Environment Cabinet
1. Department for Natural Resources
    - a. Surface mining hearings conducted under authority of KRS Chapter 350
    - b. *Oil and gas hearings conducted under the authority of KRS Chapter 353, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720*
  2. Department for Environmental Protection
    - a. Wild River hearings conducted under authority of KRS Chapter 146
    - b. Water resources hearings conducted under authority of KRS Chapter 151
    - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
    - d. Environmental protection hearings conducted under authority of KRS Chapter 224
    - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
  3. Public Service Commission
    - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- (e) Labor Cabinet
1. Department of Workers' Claims

- a. Workers' compensation hearings conducted under authority of KRS Chapter 342
  - 2. Kentucky Occupational Safety and Health Review Commission
    - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
  - (f) Public Protection Cabinet
    - 1. Kentucky Claims Commission
      - a. Liability hearings conducted under authority of KRS 49.020(1) and 49.040 to 49.180
  - (g) Education and Workforce Development Cabinet
    - 1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
  - (h) Secretary of State
    - 1. Registry of Election Finance
      - a. Campaign finance hearings conducted under authority of KRS Chapter 121
  - (i) State universities and colleges
    - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
    - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
    - 3. Campus residency hearings conducted under authority of KRS Chapter 164
    - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
    - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
  - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
  - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

➔Section 2. KRS 353.060 is amended to read as follows:

If the drilling of a well on any tract underlaid with coal-bearing strata will endanger the present or future use or operation of a workable coal bed, the owner or coal operator affected may, within fifteen (15) days from the receipt

of the plat by him and by the department, file with the *Energy and Environment Cabinet's Office of Administrative Hearings a petition in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder, listing the* ~~department~~ *specific objections in writing to the proposed location. The Energy and Environment Cabinet's Office of Administrative Hearings shall provide notice of receipt of the petition to the well operator and the department, and shall schedule a hearing,* ~~and, if the objections are so filed, the department shall notify the well operator of the character of the objections and shall fix a time and place for a hearing, to be conducted in accordance with KRS Chapter 13B,] at which~~ ~~hearing~~ *the objections shall be considered. At the hearing, the well operator and the coal operator or owner, in person or by a representative, shall consider the objections and either agree upon the location as proposed or change it so as to satisfy all objections and meet the approval of the department. Any new location thus selected and agreed upon shall be indicated on a plat in accordance with KRS 353.050 and thereupon the department shall issue to the well operator a drilling permit approving the* ~~new~~ *location and authorizing the well operator to drill at the location. If the coal operator and well operator, or the owner and well operator, are unable to agree, the hearing officer* ~~department~~ *shall make a recommendation to the secretary* ~~by final order~~ *, in view of the purposes and intent of this chapter and in compliance therewith, to fix a location on the tract as near the proposed location as possible and upon final order of the secretary, the department shall issue to the well operator a permit to drill at the new location. If no objections are filed within the fifteen (15) day period, the department shall immediately issue to the well operator a drilling permit approving the location and authorizing the well operator to proceed to drill there.*

➔Section 3. KRS 353.200 is amended to read as follows:

- (1) The department shall exercise supervision over the drilling, casing, plugging, and filling of all wells. The department shall exercise supervision over all mining operations in close proximity to any well. The department shall have access to the records and properties of coal and oil and gas operators when necessary.
- (2) The department may receive, or may file on its own motion, formal complaints *with the Energy and Environment Cabinet's Office of Administrative Hearings* that drilling or mining operations are being conducted contrary to the provisions of KRS 353.010, 353.050 to 353.130, 352.510, or 353.592, or to ~~an~~ ~~the~~ *order of the department* ~~, and shall hold administrative hearings on the complaints, in accordance with KRS Chapter 13B]. Following a hearing, the secretary~~ ~~department~~ *shall issue a final order necessary to secure the proper administration of KRS 353.010, 353.050 to 353.130, 352.510, or 353.592.*

➔Section 4. 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;
- (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 department or* 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";

- (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 for the purpose of producing gas or oil;
  - (b) Through which gas or oil is being produced; or
  - (c) Drilled or proposed to be drilled for the purpose of injecting any water, gas, or other fluid therein or 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) 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) 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;
- (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 to the extent of the prevailing royalty in the oil and gas in that portion of the pool underlying the tract owned by the owner, and as operator as to the remaining interest in such oil and gas. 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 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 oil or gas reasonably recoverable in the 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 area shall be a drilling unit;
- (20) "Underground source of drinking water" means those subsurface waters identified as 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 contaminant may result in the 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 *department or 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 *department or 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 runoff 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:
- Is known only to the hydraulic fracturing treatment's owners, employees, former employees, or persons under contractual obligation to hold the information in confidence;
  - 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
  - Is not required to be disclosed or otherwise made available to the public under any federal or state law or administrative regulation;
- (43) "Cabinet" means the Energy and Environment Cabinet;~~and~~
- (44) "Stratigraphic test well" means an exploratory borehole drilled for the sole purpose of acquiring subsurface geological and structure test data; **and**
- (45) ***"Notice" means the sending of certified mail to the last known address. The date of delivery shall be the earlier of the date shown on the certified mail return receipt or the date thirty (30) days after the date shown on the postal service proof of mailing. For the purposes of Sections 7, 8, 9, and 11 of this Act, any unknown or nonlocatable owner shall be deemed to have received notice, provided that the person giving the notice has caused to be published, no more than thirty (30) days prior to the submission of an application or order issued pursuant to an application, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, affected or proposed to be affected, is located. The applicant shall provide a copy of the published notification to the director within twenty (20) days of the date of publication. The notice shall:***
- State, as applicable, that an application is being filed with the division or that an order has been issued pursuant to an application filed with the division;***
  - Describe any tract, or portion thereof, affected or proposed to be affected;***
  - In the case of an unknown owner, identify the name of the last known owner;***
  - In the case of a nonlocatable owner, identify the owner and the owner's last known address; and***
  - State that any party claiming an interest in any tract, or portion thereof, affected or proposed to be affected, shall contact the operator at the published address.***

➔Section 5. 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) 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) 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. 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 ..... | \$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.
- (10) (a) All bonds required to be posted under this section for plugging shallow wells shall:
1. Be made in favor of the department~~[for Natural Resources]~~;
  2. 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. 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) 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) (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) To qualify for a blanket bond for a shallow well under the tiered structure set forth in subsection (12)(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) In addition to the requirements set forth in subsection (15) of this section, proof of financial ability set forth in subsection (13)(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) 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) An operator shall not be eligible for blanket bonding if the operator has:
- (a) More than ten (10) violations of KRS Chapter 353 or the regulations adopted pursuant thereto within the thirty-six (36) month period;
  - (b) Any outstanding, unabated violations of KRS Chapter 353 or the regulations adopted pursuant thereto which have not been appealed;
  - (c) 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) 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 dollar (\$200,000) bond; and
  - (b) One (1) to ten (10) horizontal deep wells require a three hundred twenty thousand dollar (\$320,000) bond.
- (18) 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) 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) 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) 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) 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) 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) The bond amounts prescribed by subsection (7) 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) The blanket bond amounts prescribed by subsection (12) 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) of this section on any wells drilled subsequent to July 15, 2006, until the blanket bond has reached the level prescribed by subsection (12) of this section.
- (25) 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) 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, *within forty-five (45) days after mailing of the notice of noncompliance, no agreement has been reached with the department regarding the alleged failure to comply, and the director determines that the operator has not complied with the requirements set forth by the department*~~[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 *ordered* forfeited to the department. *The forfeiture order shall become effective thirty (30) days after the department gives the operator notice of the order, unless a petition has been filed pursuant to Section 11 of this Act, in which case the forfeiture order shall only become effective upon a final determination of the secretary affirming the forfeiture order following the conclusion of the petition process.*
- (27) 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) 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) (a) Any permitted stratigraphic test well:
1. Is subject to all requirements under this section and KRS 353.5901, 353.550, 353.610, and 353.660(1) and (4) as if the stratigraphic test well were defined as a "well" in KRS 353.510(14); and
  2. Shall be plugged within one hundred eighty (180) days of completion of drilling the well.
- (b) A stratigraphic test well shall be permitted as an oil and gas production well prior to:
1. Producing oil or gas; or
  2. Deviating from true vertical.
- (c) Any stratigraphic test well converted to an oil or gas production well under paragraph (b) of this subsection shall be subject to the requirements of KRS 353.660(1) to (3).
- (30) 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) 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.
- (32) ***Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.***

➔Section 6. KRS 353.5901 is amended to read as follows:

- (1) A well operator shall submit to the department an operations and reclamation plan at the time of filing an application for permit to drill, deepen, or reopen a well. The plan 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 to prevent pollution, erosion, 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) 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, 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, by certified mail, return receipt requested:
  - (a) A copy of the operations and reclamation plan 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 **Energy and Environment Cabinet's Office of Administrative Hearings**~~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) 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 *to be conducted* by the **Energy and Environment Cabinet's Office of Administrative Hearings**~~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) of this section.
- (6) 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 as submitted by the well operator; or
  - (b) Accept the plan with modifications set forth by the mediator.
- (7) 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:
  - (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 includes a plan for timely, effective reclamation of all disturbed areas; and

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

(8) The director shall ***make a final agency determination*** ~~act upon the recommendation of the mediator~~ within five (5) days of the receipt of the mediation report ***accepting the plan as submitted by the well operator, accepting the plan with modifications set forth by the mediator, or approving a plan containing elements of both the original and the modified plan.***

(9) ***Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.***

➔Section 7. KRS 353.620 is amended to read as follows:

(1) Notwithstanding KRS 353.610, if an application is submitted for a permit to drill, deepen, or reopen a well closer to a boundary or to another well than prescribed in KRS 353.610 and the application is accompanied by the written consent of all owners of oil and gas interests ***within the distance prescribed*** ~~in the adjacent premises directly affected by the prescribed boundary distances~~ in KRS 353.610, which will be offset by the proposed well, the department shall issue a permit for the well.

(2) Notwithstanding KRS 353.610, ***if an application is submitted for a permit to drill, deepen, or reopen a well closer to a boundary or to another well than prescribed in KRS 353.610, and the director determines after notice to all owners of oil and gas interests within the distance prescribed in KRS 353.610 that topographical or other factors delineated by subsurface geologic mapping or reservoir analytical data make compliance with the requirements of KRS 353.610 unduly burdensome, or in conflict with reasonably prudent methods and practices for the production of oil or gas,*** the department may issue a permit for ~~the~~ well ~~to be drilled, deepened, or reopened closer to a boundary or another well than prescribed in KRS 353.610, if the director, after notice and hearing, finds that topographical or other conditions are such as to make compliance with the requirements of KRS 353.610 unduly burdensome or in conflict with reasonably prudent methods and practices for the production of oil or gas~~. ***The application may include but not be limited to core analysis, geophysical or electric log data, reservoir pressure analysis, or other information demonstrating to the satisfaction of the director that such relief is warranted.***

(3) Notwithstanding KRS 353.610, the department shall issue a permit for a well to be drilled, deepened, or reopened closer to a boundary than prescribed in KRS 353.610 if a pooling order has been issued pursuant to KRS 353.630.

(4) If a permit is issued to drill, deepen, or reopen a well under subsection (1) or (2) of this section at a location closer to a well or boundary than prescribed in KRS 353.610, the department shall permit a like variance from the requirements of KRS 353.610 on all premises offset and adversely affected by the well.

(5) ***Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.***

➔Section 8. KRS 353.630 is amended to read as follows:

(1) Whenever any separate tract of land is so situated because of size or other condition that it does not contain a location at which a well for oil or gas may be drilled, deepened, or reopened by reason of the spacing provisions of KRS 353.610, the department shall order, after notice and, ***for those required to be given notice, opportunity for comment within thirty (30) days of the date shown on the postal service proof of mailing, or, where notice is provided by publication, within thirty (30) days of the date of the publication*** ~~and a hearing~~, the pooling of all oil and gas interests in the separate tract or in a portion thereof with all like interests in a contiguous tract or tracts, or portions thereof, as are necessary to afford the pooled tracts one (1) location for the drilling, deepening, or reopening of a well for the production of oil or gas in compliance with the spacing requirements of KRS 353.500 to 353.720. The department shall require the development and operation of all pooled acreage as a single leasehold estate in accordance with regulations and rules promulgated under KRS 353.500 to 353.720.

(2) Whenever an operator proposes to drill, deepen, or reopen a well at a location that would require the pooling of separate tracts or interests in order to comply with the spacing requirements of KRS 353.610, and the operator has secured the written consent or agreement from the owners of at least fifty-one percent (51%) of the interests in each tract, or portions thereof, included in the proposed pooled acreage, the department shall, where it finds that the requirements of this subsection have been met, order, after notice, ***and for those required to be given notice, opportunity for comment within thirty (30) days of the date shown on the postal service proof of mailing, or, where notice is provided by publication, within thirty (30) days of the date of the publication*** ~~and a hearing~~, the pooling of all oil and gas interests in all tracts, or portions thereof, that are

included within the proposed pooled acreage as established by the spacing requirements of KRS 353.610. ***A pooling order shall be made only after the applicant provides notice to all persons reasonably known to own an oil or gas interest in any tract or portion thereof that is proposed to be pooled.*** For purposes of this section, any unknown or nonlocatable owners shall be deemed to have consented or agreed to the pooling, provided that the operator has complied with the publication requirements of KRS 353.640(1) with respect to the unknown or nonlocatable owners. The department shall issue a permit to drill, deepen, or reopen the well and require the development and operation of the pooled acreage as a single leasehold estate in accordance with administrative regulations promulgated under KRS 353.500 to 353.720.

- (3) Whenever an operator proposes to drill, deepen, or reopen a well at a location that would require the pooling of interests or tracts in order to comply with the spacing requirements of KRS 353.610, and the operator owns or controls the right to develop the oil and gas underlying one hundred percent (100%) of the interests in each tract, or portions thereof, included in the proposed pooled acreage, the department shall, where it finds that the requirements of this subsection have been met, order, after notice and, ***for those required to be given notice, opportunity for comment within thirty (30) days of the date shown on the postal service proof of mailing, or, where notice is provided by publication, within thirty (30) days of the date of the publication*** ~~[a hearing]~~, the pooling of all oil and gas interests in all tracts, or portions thereof, that are included within the proposed pooled acreage established by the spacing requirements of KRS 353.610. ***A pooling order shall be made only after the applicant provides notice to all persons reasonably known to own an oil or gas interest in any tract or a portion thereof proposed to be pooled. For purposes of this section, any unknown or nonlocatable owners shall be deemed to have consented or agreed to the pooling, provided that the operator has complied with the publication requirements as set forth in subsection (1) of Section 9 of this Act with respect to the unknown or nonlocatable owners.*** The department shall issue a permit to drill, deepen, or reopen the well and require the development and operation of all pooled tracts as a single leasehold estate in accordance with administrative regulations promulgated under KRS 353.500 to 353.720.
- (4) No pooling as permitted by this section shall be ordered except:
  - (a) When an application has been filed to drill, deepen, or reopen a well within the distance limitations prescribed in KRS 353.610; and
  - (b) When a lessee or owner of an oil or gas interest in the tract shall request the pooling.
- (5) No pooling as permitted by this section shall be ordered with respect to any tract or portion thereof upon which a well is drilled, deepened, or reopened:
  - (a) Unless the pooling was requested prior to the commencement of the drilling, deepening, or reopening of the well by a lessee or owner of an oil and gas interest in a contiguous tract pursuant to subsection (1), (2), or (3) of this section; and
  - (b) Unless the request, if made by the owner of an operating interest who elects to participate in the risk and cost of the drilling, deepening, or reopening of the well, is accompanied by a bond or other security satisfactory to and in an amount set by the director for the payment of such owner's share of the cost of drilling, deepening, or reopening the well.
- (6) Production from any well which is ordered pooled pursuant to KRS 353.500 to 353.720 shall be deemed for all purposes to have been so produced from each tract or portion thereof included in the pool in proportion to the amounts established in the pooling order.
- (7) ***Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.***

➔Section 9. KRS 353.640 is amended to read as follows:

- (1) The operator shall provide a list to the department of all persons reasonably known to own an oil or gas interest in any tract, or portion thereof, proposed to be pooled in an application to the department for a pooling order. A pooling order shall be made only after the ***applicant*** ~~[department]~~ provides notice to all persons reasonably known to own an oil or gas interest in any tract, or a portion thereof, proposed to be pooled ~~[after a hearing has been held]~~. In the event of the filing of an application for a pooling order under KRS 353.630(2) where unknown owners or nonlocatable owners exist, the operator shall cause to be published, ***not more than thirty (30) days prior to the submission of an*** ~~[at least twenty (20) days prior to the hearing on the]~~ application for ~~[the]~~ pooling ~~[order]~~, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, proposed to be pooled is located. The notice shall:

- (a) State that an application for a pooling order is being filed with the division ~~of Oil and Gas in the Department for Natural Resources~~;
- (b) Describe any tract, or portion thereof, proposed to be pooled;
- (c) In the case of an unknown owner, identify the name of the last known owner;
- (d) In the case of a nonlocatable owner, identify the owner and the owner's last known address; and
- (e) State that any party claiming an interest in any tract, or portion thereof, proposed to be pooled should contact the operator at the published address and provide a copy of the notification to the director ~~of the Division of Oil and Gas in the Department for Natural Resources~~ within twenty (20) days of the date of publication.

***The applicant shall file proof of notice with the division concurrently with the application.***

- (2) A pooling order shall authorize the drilling, deepening, or reopening, and the operation of a well for the production of oil or gas on the tracts or portions thereof pooled; shall designate the operator to drill and operate the well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions thereof may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, deepening, or reopening, and the completing, operating, plugging, and abandoning the well shall be borne, and all production from the well shall be shared by all owners of operating interests in proportion to the net mineral acres in the pooled tracts owned or under lease to each owner; and shall make provision for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision, by all those who elect to participate therein.
- (3) A pooling order shall establish a procedure for the owner of an operating interest who does not decide to become a participating operator to elect to either:
  - (a) Surrender, by means of sale or lease, the interest to a participating operator on a reasonable basis and for a reasonable consideration, which if not agreed upon shall be determined by the director ~~of the Division of Oil and Gas~~; or
  - (b) Share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his or her share equal two hundred percent (200%) of the share of the costs allocable to his or her interest.
- (4) An oil or gas owner whose identity and location remain unknown ***after thirty (30) days has passed from the date of publication required by subsection (1) of this section*** ~~at the conclusion of a hearing concerning the entry of a pooling order for which public notice was given~~ and whose interest is pooled pursuant to KRS 353.630(3) shall be deemed to have elected to lease the interest to the oil or gas operator, exclusive of one-eighth (1/8) of the production attributable to the unleased interest, and shall not be entitled to make the election established in subsection (3) of this section.
- (5) Except as provided in this subsection, an oil or gas owner who does not make an election under the pooling order within thirty (30) days of the entry of the order shall be deemed to have leased the oil or gas interest to the oil or gas well operator in the manner established in subsection (4) of this section. If the holder of an operating interest has obtained the interest by lease or other agreement granting the right to conduct operations to anyone other than the holder of the oil and gas estate, and if the owner of the operating interest does not make an election under the pooling order, the holder of the operating interest shall be deemed to have elected to share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his or her share equal two hundred percent (200%) of the share of the costs allocable to his or her interest.
- (6) A person whose interest is subject to an oil or gas lease or other agreement which grants to another the right to operate or conduct operations shall not own an operating interest for the purposes of subsection (3) of this section.
- (7) ***The department shall provide a copy of the pooling order entered under KRS 353.500 to 353.720 to those required to be noticed.*** A certified copy of any pooling order ~~entered under KRS 353.500 to 353.720~~ shall be ~~entitled to be~~ recorded ***by the operator*** in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located, and the record of the order, from the time of lodging the order for record, shall be ***deemed to be delivery*** ~~notice~~ of the order to all ***unknown or nonlocatable owners*** ~~persons~~.



- (8) *Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.*

➔Section 10. KRS 353.645 is amended to read as follows:

This section applies to any lessee or owner of an oil and gas interest in a proposed unit.

- (1) The department, ~~at upon~~ its own *discretion*~~motion~~ or upon the application of any lessee or owner of an oil and gas interest in a pool or pools of a proposed unit may, after notice to all *lessees or owners of an oil and gas interest in a pool or pools of a proposed unit, issue an order*~~interested persons, conduct a hearing to consider the need~~ for the operation and development as a unit of any pool or pools, or any portion thereof, for the production of oil and associated gas in order to increase their ultimate recovery by unitized operation and development so that each owner in the pool or pools shall have the opportunity to recover his fair and equitable share of the recoverable oil and gas in the unit.
  - ~~(a) The hearing shall be conducted in accordance with KRS Chapter 13B. Notice of the hearings prescribed in this subsection shall be given to all persons reasonably known to the department to be a lessee or owner of an oil and gas interest in a pool or pools within a proposed unit.~~
  - ~~(b)~~ The department may require a reasonable application fee from a lessee or owner of an oil and gas interest applying for a proposed unit.
- (2) The application for a unit shall include the following:
  - (a) A description of the area to be included in the unit, with a map attached, and a description of the pool or pools, or portions thereof, to be included within the unit;
  - (b) A statement of the nature of the unit operations contemplated;
  - (c) A proposed allocation of production and reserves among the separately-owned tracts and interests contributed to the unit. Reserves shall be calculated by industry standard methods supported by geological and engineering data, as determined to be appropriate by the department. The department may require an independent third party to verify the calculations as to proposed allocation of production or reserves;
  - (d) The procedure upon which wells and equipment of the separately-owned tracts and interests are to be used and compensated for in unit operations; and
  - (e) Documentation that the application is approved by at least fifty-one percent (51%) ownership in the interests proposed for inclusion in the unit.
- (3) After notice ~~and hearing~~ in the manner established in this section, the department shall issue a final order establishing a unit and requiring unit operation and development if it finds that:
  - (a)
    1. The unitized operation and development of a pool or pools, or any portion thereof, for the production of oil and associated gas is reasonably necessary in order to effectively carry on operations for enhanced recovery, including but not limited to, increased density drilling, or secondary recovery operations by pressure-maintenance, repressuring, cycling, water flooding, tertiary recovery operations, or any combination of these, in order to substantially increase the ultimate recovery of oil and associated gas from the pool or pools within the unit, or to protect the correlative rights of affected mineral owners; and
    2. The value of the additional recovery of oil and associated gas exceeds the estimated additional cost incident to conducting the operation; or
  - (b) The unitized operation of the pool or pools within the unit will prevent waste and protect the correlative rights of the owners in the pool or pools within the unit.
- (4) Each well permitted to be drilled, deepened, reopened, or converted to an injection well and operated in a unit shall conform to either the spacing standards established in KRS 353.610, or to other unit spacing that shall be established by the department ~~as a part of the hearing provided for in this section~~.
- (5) All unit operations and production shall be deemed, for all purposes, as the conduct of operations and production upon each of the separately-owned tracts and interests in the unit.
- (6) A unitization order issued in accordance with this section shall:

- (a) Authorize the unit operation of a pool or pools, including drilling, deepening, reopening, conversion to injection wells, and operation of all wells within the unit for the production of oil and gas from the unit;
  - (b) Designate the unit operator of the operation;
  - (c) Approve a unit operating agreement;
  - (d) Provide for the allocation of production and reserves among all separately-owned tracts and interests in the unit;
  - (e) Provide for the proportionate allocation of all reasonable costs and expenses of unit operations as these costs and expenses are set out in the approved operating agreement. Costs and expenses shall be allocated among all participating owners of operating interests who elect to participate in the proportion that the separately-owned tracts and interests share in the production of the unit; and
  - (f) Establish the spacing approved for the unit.
- (7) Any unitization 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 developing the unit may elect to surrender his interest, or a portion of it, to the participating owners on a reasonable basis and for a reasonable consideration, which if not agreed upon, shall be determined by the department; or elect to participate in the development of the unit on a carried basis on terms and conditions which, if not agreed upon, shall be determined by the department to be just and reasonable. If a dispute arises as to the costs of operating and developing a unit, then the department shall determine and apportion the costs within ninety (90) days after the date of written notification to the department of the existence of the dispute; however, any person disputing an actual or proposed expenditure shall file notice of the disputed costs within one (1) year after notice of the actual or proposed expenditure was received by the person filing the dispute.
- (8) An order establishing a unit may be modified, altered, extended, vacated, or otherwise amended by the department after notice ~~and hearing~~ as prescribed in this section and a demonstration by affected persons of a significant change of circumstances supporting the amendment.
- (a) An amendment to extend or enlarge the unit area shall be agreed upon in writing by documented owners of at least a fifty-one percent (51%) ownership in the interests in the pool or pools in the unit;
  - (b) An amendment of a unitization order enlarging a unit shall allocate to each tract or interest in the unit, as amended, a portion of the total production of oil or gas, or both, from the unit so enlarged, in proportion to the contribution of the tract or interest to the unit during the remaining course of unit operations, and shall supersede and be in lieu of the allocation of production provided for in any previously-established unit and shall have an effective date provided for in the order.
- (9) Wells drilled, deepened, or reopened for the injection of water, gas, or other fluids into any subsurface formation shall be governed by applicable state and federal statutes and regulations.
- (10) *Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.*

➔Section 11. KRS 353.700 is amended to read as follows:

- (1) Any person aggrieved by any *final determination made or* order issued by the department *under this chapter, except any orders of the commission, may file with the Energy and Environment Cabinet's Office of Administrative Hearings a petition alleging that the determination is contrary to law or fact and is injurious to the petitioner, alleging the grounds and reasons therefor, and demanding a hearing. An order or final determination includes but is not limited to the issuance, denial, modification, or revocation of a permit, but does not include the issuance of a letter identifying deficiencies in an application for a permit, a registration or a certification, or other nonfinal determinations. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein, and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of the notice unless the person complained against waives in writing the twenty-one (21) day period* ~~for by the commission under KRS 353.500 to 353.720 shall have the right to bring a civil action for review of the order by filing a complaint in the Circuit Court of the county in which the premises or any portion thereof affected by the order is located, or in the Franklin Circuit Court~~.
- (2) *The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the final determination or order complained of, or could reasonably*

*have had notice*~~[The suit shall be brought within thirty (30) days after the order is issued, and in event no suit is filed within the thirty (30) day period, the order shall be final].~~

- (3) ~~[In the suit]~~ The burden of proof shall be upon the party complaining of the order *or final determination*~~[, and the order shall be deemed prima facie valid]~~. Any party~~[to the suit]~~ may offer *into*~~[in]~~ evidence all or any part of the record of the hearing which resulted in the order, and any other relevant evidence.
- (4) *All hearings under this chapter, except those before the commission, shall be held before a hearing officer, duly qualified to practice law in the Commonwealth of Kentucky, who may be a full-time employee of the cabinet, serve by contract, or be paid on a per diem basis at the discretion of the cabinet. After the conclusion of the hearing, the hearing officer shall, within sixty (60) days, make to the secretary a report and recommended order, which shall contain findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of the report and recommended order upon all parties of record to the proceeding and their counsels, if any, and they shall be granted the right to file exceptions thereto within fourteen (14) days of receipt. Any party may submit a written response to exceptions within twenty-one (21) days of receipt of the report and recommended order. Exceptions and responses not timely filed shall be noted but shall not be considered by the secretary in making a final order. Within ninety (90) days of the report or recommendation made by the hearing officer, the secretary shall consider the report, exceptions, responses to exceptions, and recommended order and decide the case. The decision shall be served by mail upon all parties and their attorney of record and shall be a final order of the cabinet.*
- (5) *The cabinet shall promulgate administrative regulations, pursuant to the provisions set forth in this chapter and to the extent possible, consistent with those promulgated pursuant to KRS Chapter 224, establishing formal and informal hearing procedures by which any hearing shall, upon the written request of the operator, permittee, or other person, be held in the Energy and Environment Cabinet's Office of Administrative Hearings in Frankfort, before an impartial hearing officer who is independent of any prosecutorial functions of the cabinet. The administrative regulations shall provide for the conduct of hearings and investigations of any matter relating to this chapter. The procedures developed pursuant to this subsection shall provide that the hearings be held in the most expeditious manner possible within the time constraints established under this chapter. No person who presided at a prior hearing shall either preside at a subsequent hearing or participate in any further decision or subsequent administrative appeal in the same matter.*
- (6) *Any party aggrieved by a final order of the secretary resulting from a hearing conducted pursuant to this section may appeal to the Franklin Circuit Court within thirty (30) days from the issuance of the final order. The party or parties affected by the final order shall file in the Circuit Court a petition, which states fully the grounds upon which a review is sought and shall assign all errors relied on. The cabinet shall be named respondent, and service shall be had on the secretary. Summons shall issue upon the petition directing the cabinet to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that the record is its entire original record or a true copy. The record, when filed, shall become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal, may, upon notice to the parties, proper showing, and in the discretion of the court, be permitted to intervene. The court shall review the entire record and the findings and final order of the cabinet. No objection to the final order shall be considered by the court, unless the issue was raised before the cabinet or there were reasonable grounds for failure to do so. The findings of the cabinet as to the facts shall be prima facie evidence of the facts found therein. The court shall review the entire record and the findings and final order of the cabinet~~[On appeal no new evidence may be introduced, except as to fraud or misconduct of some person engaged in the hearing before the commission, unless the court upon motion and for good cause shown determines that the interests of justice will be better served by the introduction of new evidence. The court sitting without a jury shall hear the cause upon the record before it, and dispose of the appeal in a summary manner, being limited to determining: whether or not the commission acted without or in excess of its powers; the order was procured by fraud; the order is not in conformity to the provisions of KRS Chapter 353; the order is clearly erroneous on the basis of reliable, probative and material evidence contained in the whole record; or the order is arbitrary, or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The court shall enter its findings on the order book as a judgment of the court, and such judgment shall have the same effect and be enforceable as any other judgment of the court in civil causes.~~*
- (5) ~~The practice, pleading and proceedings in the suit shall be in accordance with the Rules of Civil Procedure].~~

(7)(6) ~~In the suit~~ The court may stay the order until the court shall enter its decree. The court shall have jurisdiction to enter a decree affirming or setting aside the order or remanding the cause with directions to modify the order so that it shall conform to the provisions of *this chapter* ~~[KRS 353.500 to 353.720]~~. Appeals may be taken by any party to the suit in the same manner and to the same extent as in other civil actions.

➔Section 12. KRS 353.806 is amended to read as follows:

- (1) The storage operator shall negotiate with the pore space owners and acquire rights needed to access the pore space.
- (2) If, after good-faith negotiation, the storage operator cannot locate or cannot reach an agreement with all necessary pore space owners, but has secured written consent or agreement from the owners of at least fifty-one percent (51%) of the interest in the pore space for the storage facility, the division shall order the pooling of all pore space included within the proposed storage facility if the division:
  - (a) ~~— Holds a hearing after notice pursuant to KRS Chapter 13B; and~~
  - (b) ~~—~~ finds that the requirements of this section and KRS 353.808 have been met.

For the purposes of this section, any unknown or nonlocatable owners shall be deemed to have consented or agreed to the pooling, provided that the storage operator has complied with the publication requirements of KRS 353.808.

- (3) A carbon injection well shall be exempt from the provisions of KRS 353.651 and 353.652 and 805 KAR 1:100, regardless of the depth of the well.
- (4) *Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.*

➔Section 13. KRS 353.808 is amended to read as follows:

- (1) The storage operator shall provide a list to the division of all persons reasonably known to own an interest in pore space proposed to be pooled in an application to the division for a pooling order. A pooling order shall be made only after the division provides notice to all pore space owners proposed to be pooled ~~and after a hearing has been held~~.
- (2) The division shall set and collect a fee adequate to pay expenses associated with the conduct of administrative hearings for pooling of pore space.
- (3) If the proposed pooling order concerns pore space with unknown or nonlocatable owners, the storage operator shall publish one (1) notice in the newspaper of the largest circulation in each county in which the pore space is located. The notice shall appear *no more than thirty (30) days prior to the initial* ~~at least twenty (20) days prior to the hearing on the~~ application for the pooling order. The notice shall:
  - (a) State that an application for a pooling order has been filed with the division ~~of Oil and Gas in the Department for Natural Resources~~;
  - (b) Describe the pore space proposed to be pooled;
  - (c) In the case of an unknown pore space owner, indicate the name of the last known owner;
  - (d) In the case of a nonlocatable pore space owner, identify the owner and the owner's last known address; *and*
  - (e) State that any person claiming an interest in the pore space proposed to be pooled should notify the director of the division and the storage operator at the published address within twenty (20) days of the publication date ~~; and~~
  - (f) ~~Give the date, time, and location of the hearing~~.

*The applicant shall file proof of notice with the division concurrently with the application.*

- (4) A pooling order shall authorize the long-term storage of carbon dioxide beneath the tract or portion. The order shall also authorize, where necessary, the location of carbon injection wells, outbuildings, roads, monitoring equipment, and access to them. The pooling order shall identify the compensation to be paid to unknown, nonlocatable, and nonconsenting pore space owners and the basis for valuation of the pooled interest.
- (5) A certified copy of any pooling order shall ~~be entitled to~~ be recorded *by the operator* in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located. *The*

*department shall provide a copy of the pooling order to those required to be noticed, in the manner provided in subsection (45) of Section 4 of this Act. For purposes of this section, any unknown or nonlocatable owners shall be deemed to have received notice, provided that the operator has complied with the publication requirements of subsection (3) of this section with respect to the unknown or nonlocatable owners*~~[Recordation of the order shall be notice of the order to all persons]~~.

- (6) *Any order or final determination of the department under this section shall be subject to review in accordance with Section 11 of this Act and any administrative regulations promulgated thereunder.*

**Signed by Governor April 2, 2018.**