

353.449 Agreement of pore space owners -- Nonconsenting owners -- Inclusion of pore space by order of cabinet -- Pooling order -- Costs -- Hearing -- Seismic survey -- Liability.

- (1) If a sequestration operator is unable, after reasonable effort, to obtain the consent of all pore space owners within a proposed reservoir for an underground carbon dioxide sequestration facility, the cabinet may on petition satisfying the conditions established in this section, issue an order that the identified pore space owned by nonconsenting owners be included in a sequestration facility for the purpose of geologic sequestration of carbon dioxide pursuant to subsection (5) of this section.
- (2) The Class VI permit applicant shall negotiate in good faith with the pore space owners and acquire rights needed to access the pore space.
- (3) Except for temporary access in cases of emergency, the cabinet shall not allow any surface disturbance on any surface tract or tracts overlying the pore space of a nonconsenting owner.
- (4) The sequestration operator shall provide a list to the cabinet of all persons reasonably known to own an interest in pore space proposed to be included in the reservoir.
- (5)
 - (a) If the applicant or operator cannot reach an agreement with the owners of the pore space acreage in a proposed reservoir, but has secured written consent for at least seventy-five percent (75%) of the pore space acreage in the proposed reservoir, all the pore space in the sequestration reservoir shall be declared to be included within the proposed sequestration facility if the cabinet finds that the requirements of this section have been met.
 - (b) For the purposes of this section, the interests of any unknown or missing pore space owners may be declared to be included through the pooling order provided reasonable effort to locate and notify the owners has been made and the sequestration operator has complied with the publication requirements of subsection (7) of this section. A pooling order shall be made only after the cabinet provides notice to all pore space owners proposed to be included within the order.
- (6) The applicant shall pay to the cabinet all costs associated with the conduct of the administrative hearing as assessed in the pooling order. The payment shall be made prior to the pooling order becoming effective. These funds shall be deposited into the carbon dioxide sequestration facility administrative fund established in KRS 353.437.
- (7) If the proposed pooling order concerns pore space with unknown or missing owners, the sequestration operator shall, after reasonable efforts to locate the pore space owners, 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 forty-five (45) days nor less than thirty (30) days prior to the initial application for the pooling order. The applicant shall file proof of notice with the cabinet concurrently with the application. The notice shall:
 - (a) State that an application for a pooling order has been filed with the cabinet;
 - (b) Describe the property under which the pore space proposed to be collectively

- used is located;
- (c) In the case of an unknown pore space owner, indicate the name of the last known owner;
 - (d) In the case of a missing 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 collectively used shall notify the cabinet and the Class VI permit applicant at the published address within twenty (20) days of the publication date.
- (8) A pooling order shall authorize the injection and sequestration of carbon dioxide beneath the tract or portion thereof. The pooling order shall identify the compensation to be paid to unknown, missing, and nonconsenting pore space owners and the basis for valuation of the collective interest. The cabinet may consider evidence submitted by nonconsenting pore space owners as to the valuation of their interest.
 - (9) Except for temporary access in cases of emergency, the pooling order issued by the cabinet shall not authorize any surface entry or surface disturbance by the permittee on any surface tract or tracts overlying the pore space of a nonconsenting, missing, or unknown owner.
 - (10) A certified copy of any pooling order and a survey of the sequestration field shall be maintained by the cabinet.
 - (11) If the cabinet or US EPA requires a seismic survey of lands owned by the nonconsenting surface owner and an operator is unable to reasonably obtain by negotiation with a property owner the right to conduct seismic surveys on lands owned by the nonconsenting surface owner, then:
 - (a) The cabinet may issue an order allowing the operator to conduct a seismic survey of the lands owned by the nonconsenting surface owner from outside the boundaries of the lands owned by the nonconsenting surface owner;
 - (b) The operator shall, prior to conducting the survey, pay the surface owner just and reasonable compensation as established by the cabinet; and
 - (c) Any data obtained by the operator through a seismic survey of the lands owned by a nonconsenting surface owner shall be held as confidential and shall be used only by the permittee, the cabinet, and US EPA for the purpose of satisfying statutory or regulatory requirements.
 - (12) Except for the authorized persons and circumstances in subsection (11) of this section, any person disclosing confidential seismic survey data may be liable to the nonconsenting surface owner as provided under law.
 - (13) The operator shall defend, indemnify, and hold harmless the property owner for all claims arising out of any surface or subsurface entry onto the property by the operator, its contractors, and its agents, except those claims arising from the intentional acts of a property owner.

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