

1 AN ACT relating to oil and gas.

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

3 ➔Section 1. KRS 353.510 is amended to read as follows:

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

- 5 (1) "Department" means the Department for Natural Resources;
- 6 (2) "Commissioner" means the commissioner of the Department for Natural Resources;
- 7 (3) "Director" means the director of the Division of Oil and Gas as provided in KRS  
8 353.530;
- 9 (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as  
10 provided in KRS 353.565;
- 11 (5) "Person" means any natural person, corporation, association, partnership, receiver,  
12 governmental agency subject to KRS 353.500 to 353.720, trustee, so-called  
13 common-law or statutory trust, guardian, executor, administrator, or fiduciary of  
14 any kind, federal agency, state agency, city, commission, political subdivision of the  
15 Commonwealth, or any interstate body;
- 16 (6) "Correlative rights" means the reasonable opportunity of each person entitled  
17 thereto to recover and receive or receive, without waste, the oil and gas in and under  
18 or produced from a tract or tracts in which the person owns or controls an interest,  
19 or proceeds thereof;
- 20 (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of  
21 gravity, which are produced at the well in liquid form by ordinary production  
22 methods and which are not the result of condensation of gas after it leaves the  
23 underground reservoir;
- 24 (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons  
25 not defined in subsection (7) of this section as oil;
- 26 (9) "Pool" means:
- 27 (a) An underground reservoir containing a common accumulation of oil or gas or

1           both; or

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

3           Each productive zone of a general structure which is completely separated from any  
4           other zone in the structure, or which for the purpose of KRS 353.500 to 353.720  
5           may be so declared by the department, is covered by the word "pool";

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

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

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

18       (13) "Workable bed" means:

19          (a) A coal bed actually being operated commercially;

20          (b) A coal bed that the department decides can be operated commercially and the  
21                operation of which can reasonably be expected to commence within not more  
22                than ten (10) years; or

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

26       (14) "Well" means a borehole:

27          (a) Drilled or proposed to be drilled for the purpose of producing gas or oil;

- 1 (b) Through which gas or oil is being produced; or
- 2 (c) Drilled or proposed to be drilled for the purpose of injecting any water, gas, or
- 3 other fluid therein or into which any water, gas, or other fluid is being
- 4 injected;
- 5 (15) "Shallow well" means any well drilled and completed at a depth of six thousand
- 6 (6,000) feet or less except, in the case of any well drilled and completed east of
- 7 longitude line 84 degrees 30'; shallow well means any well drilled and completed at
- 8 a depth of six thousand (6,000) feet or above the base of the lowest member of the
- 9 Devonian Brown Shale, whichever is the deeper in depth;
- 10 (16) "Deep well" means any well drilled and completed below the depth of six thousand
- 11 (6,000) feet or, in case of a well located east of longitude line 84 degree 30', a well
- 12 drilled and completed at a depth below six thousand (6,000) feet or below the base
- 13 of the lowest member of the Devonian Brown Shale, whichever is deeper;
- 14 (17) "Operator" means:
- 15 (a) For a deep well, any owner of the right to develop, operate, and produce oil
- 16 and gas from a pool and to appropriate the oil and gas produced therefrom,
- 17 either for himself or for himself and others. In the event that there is no oil and
- 18 gas lease in existence with respect to the tract in question, the owner of the oil
- 19 and gas rights therein shall be considered as the royalty owner to the extent of
- 20 the prevailing royalty in the oil and gas in that portion of the pool underlying
- 21 the tract owned by the owner, and as operator as to the remaining interest in
- 22 such oil and gas. In the event the oil is owned separately from the gas, the
- 23 owner of the right to develop, operate, and produce the substance being
- 24 produced or sought to be produced from the pool shall be considered as
- 25 "operator" as to such pool; and
- 26 (b) For a shallow well, any owner of the right to develop, operate, and produce oil
- 27 and gas from a pool and to appropriate the oil and gas therefrom, either for

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

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

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

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

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

27   (22) "Endangerment of underground sources of drinking water" means underground

1 injection which may result in the presence in underground water, which supplies or  
2 can reasonably be expected to supply any public water system, of any contaminant  
3 and if the presence of the contaminant may result in the system's not complying  
4 with any national primary drinking water regulation or may otherwise adversely  
5 affect the health of persons;

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

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

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

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

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

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

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

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

27 (28) "Best management practices" means demonstrated practices intended to control site

- 1 runoff and pollution of surface water and groundwater to prevent or reduce the  
2 pollution of waters of the Commonwealth;
- 3 (29) "Abandoned storage tank facility" means any aboveground storage tank or  
4 interconnected grouping of tanks that is no longer being actively used and  
5 maintained in conjunction with the production and storage of crude oil or produced  
6 water;
- 7 (30) "Spill prevention, control, and countermeasure structures" means containment  
8 structures constructed around a storage facility to contain facility discharges;
- 9 (31) "Landowner" means any person who owns real property where an abandoned  
10 storage tank facility is currently located;
- 11 (32) "Chemical Abstracts Service" means the division of the American Chemical Society  
12 that is the globally recognized authority for information on chemical substances;
- 13 (33) "Chemical abstracts service number" means the unique identification number  
14 assigned to a chemical by the Chemical Abstracts Service;
- 15 (34) "Chemical" means any element, chemical compound, or mixture of elements or  
16 compounds that has its own specific name or identity, such as a chemical abstracts  
17 service number;
- 18 (35) "Chemical disclosure registry" means the chemical registry known as FracFocus  
19 developed by the Groundwater Protection Council and the Interstate Oil and Gas  
20 Compact Commission. If that registry becomes permanently inoperable, the  
21 chemical disclosure registry shall mean another publicly accessible Web site that is  
22 designated by the commissioner;
- 23 (36) "Division" means the Kentucky Division of Oil and Gas;
- 24 (37) "Emergency spill or discharge" means an uncontrolled release, spill, or discharge  
25 associated with an oil or gas well or production facility that has an immediate  
26 adverse impact to public health, safety, or the environment as declared by the  
27 secretary of the cabinet;

- 1 (38) "Health professional" means a physician, physician assistant, nurse practitioner,  
2 registered nurse, or emergency medical technician licensed by the Commonwealth  
3 of Kentucky;
- 4 (39) "High-volume horizontal fracturing treatment" means the stimulated treatment of a  
5 horizontal well by the pressurized application of more than eighty thousand  
6 (80,000) gallons of water, chemical, and proppant, combined for any stage of the  
7 treatment or three hundred twenty thousand (320,000) gallons in the aggregate for  
8 the treatment used to initiate or propagate fractures in a geological formation for the  
9 purpose of enhancing the extraction or production of oil or natural gas;
- 10 (40) "Proppant" means sand or any natural or man-made material that is used in a  
11 hydraulic fracturing treatment to prop open the artificially created or enhanced  
12 fractures once the treatment is completed;
- 13 (41) "Total water volume" means the total quantity of water from all sources used in a  
14 high-volume hydraulic fracturing treatment;
- 15 (42) "Trade secret" means information concerning the volume of a chemical or relative  
16 concentration of chemicals used in a hydraulic fracturing treatment that:
- 17 (a) Is known only to the hydraulic fracturing treatment's owners, employees,  
18 former employees, or persons under contractual obligation to hold the  
19 information in confidence;
- 20 (b) Has been perfected and appropriated by the exercise of individual ingenuity  
21 which gives the hydraulic fracturing treatment's owner an opportunity to retain  
22 or obtain an advantage over competitors who do not know the information;  
23 and
- 24 (c) Is not required to be disclosed or otherwise made available to the public under  
25 any federal or state law or administrative regulation;
- 26 (43) "Cabinet" means the Energy and Environment Cabinet;
- 27 (44) "Stratigraphic test well" means an exploratory borehole drilled for the sole purpose

1 of acquiring subsurface geological and structure test data;~~and~~

2 (45) "Notice" means the sending of certified mail to the last known address. The date of  
 3 delivery shall be the earlier of the date shown on the certified mail return receipt or  
 4 the date thirty (30) days after the date shown on the postal service proof of mailing.  
 5 For the purposes of KRS 353.620, 353.630, 353.640, and 353.700, any unknown or  
 6 nonlocatable owner shall be deemed to have received notice, provided that the  
 7 person giving the notice has caused to be published, no more than thirty (30) days  
 8 prior to the submission of an application or order issued pursuant to an application,  
 9 one (1) notice in the newspaper of the largest circulation in each county in which  
 10 any tract, or portion thereof, affected or proposed to be affected, is located. The  
 11 applicant shall provide a copy of the published notification to the director within  
 12 twenty (20) days of the date of publication. The notice shall:

- 13 (a) State, as applicable, that an application is being filed with the division or that  
 14 an order has been issued pursuant to an application filed with the division;  
 15 (b) Describe any tract, or portion thereof, affected or proposed to be affected;  
 16 (c) In the case of an unknown owner, identify the name of the last known owner;  
 17 (d) In the case of a nonlocatable owner, identify the owner and the owner's last  
 18 known address; and  
 19 (e) State that any party claiming an interest in any tract, or portion thereof,  
 20 affected or proposed to be affected, shall contact the operator at the published  
 21 address;~~and~~

22 **(46) (a) "Control person" means a person who:**

- 23 **1. Has the ability to commit the financial or real property assets or**  
 24 **working resources of an entity to comply with this chapter and the**  
 25 **administrative regulations promulgated hereunder with respect to the**  
 26 **operations of a well or the manner in which a well is operated;**  
 27 **2. Has any other relationship that gives that person authority to**



1 determine the manner in which a well is operated, plugged, and  
2 abandoned. This includes a rebuttable presumption that an ineligible  
3 person is directing the actions of his or her spouse or child who files  
4 an application;

5 3. Is an officer, director, or general partner of an entity; or

6 4. Has an ownership interest in an entity equaling or exceeding fifty  
7 percent (50%), except that the cabinet may determine that a person  
8 has controlling interest in an entity with less than fifty percent (50%)  
9 ownership.

10 (b) Unless the person is determined to qualify under paragraph (a) of this  
11 subsection, "control person" does not include:

12 1. An independent third-party service company;

13 2. A contract operator;

14 3. A well tender or pumper;

15 4. The owner of a non-operated undivided working interest;

16 5. A limited partner;

17 6. A unitholder in a limited liability company; or

18 7. Any other person who by virtue of a joint operating agreement, entity  
19 governance agreement, or other contractual relationship does not  
20 have the right to control the manner in which a well is operated and  
21 plugged and abandoned;

22 (47) "Eligible well" means:

23 (a) An orphan well; or

24 (b) Any abandoned well that poses an imminent threat to human health, safety,  
25 or the environment; and

26 (48) "Orphan well" means any oil or gas well which has been determined by the  
27 cabinet to be improperly abandoned or improperly closed, and that:

1 (a) 1. Predates the state oil and gas permitting requirements enacted on  
 2 June 16, 1960; or

3 2. Has no known history of permitting or bonding under any state  
 4 regulatory program; and

5 (b) 1. Has no known owner or operator with continuing legal responsibility;  
 6 or

7 2. All owners or operators with continuing legal responsibility for the  
 8 well are determined to be financially insolvent following a reasonable  
 9 investigation conducted by the cabinet.

10 ➔Section 2. KRS 353.562 is amended to read as follows:

11 (1) (a) There is hereby created the Kentucky Abandoned Storage Tank and Orphan  
 12 Well Reclamation Program. The purpose of the program is to:

13 1. Reclaim abandoned storage tanks;

14 2. Properly plug and abandon eligible wells; and

15 3. Address imminent threats to human health, safety, or the environment  
 16 posed by oil and gas facilities located in the Commonwealth.

17 (b) Reclamation of abandoned storage tank facilities and eligible wells under  
 18 the program shall include;

19 1. Removing necessary well and tank infrastructure;

20 2. Proper plugging and abandonment of eligible wells;

21 3. Proper abandonment of tanks posing an imminent threat to human  
 22 health, safety, or the environment;

23 4. Implementation of best management practices at sites associated with  
 24 eligible wells or abandoned storage tank facilities; or

25 5. Removing primary and secondary sources of contamination of the  
 26 land, air, and water.

27 (c) Orphan wells and abandoned storage tank facilities determined by the

1            *cabinet to be eligible for plugging, removal, reclamation, and clean up*  
 2            *funds from the Kentucky abandoned storage tank and orphan well*  
 3            *reclamation fund shall be addressed in accordance with this section, KRS*  
 4            *353.561, and Sections 3 and 4 of this Act* ~~There is hereby created the~~  
 5            ~~Kentucky Abandoned Storage Tank Reclamation Program. The purpose of the~~  
 6            ~~program is to reclaim abandoned storage tank facilities in order to return the~~  
 7            ~~property to productive use. Reclamation of abandoned storage tank facilities~~  
 8            ~~shall include removing necessary tank infrastructure and removing primary~~  
 9            ~~and secondary sources of contamination of the land, air, and water.~~  
 10            ~~Abandoned storage tank facilities enrolled in the program shall be eligible for~~  
 11            ~~reclamation and clean up funds from the Kentucky abandoned storage tank~~  
 12            ~~reclamation fund].~~

13            (2) The Kentucky abandoned storage tank *and orphan well* reclamation fund is hereby  
 14            created as an interest-bearing, restricted, agency account. The fund shall be  
 15            administered by the cabinet. Interest credited to the account shall be retained in the  
 16            account. Notwithstanding KRS 45.229, any moneys remaining in the fund at the  
 17            close of the fiscal year shall not lapse but shall be carried forward into the  
 18            succeeding fiscal year to be used for the purposes *authorized and* set forth in this  
 19            section and KRS 353.561, 353.563, and 353.564.

20            (3) *The fund established in subsection (2) of this section may utilize and expend*  
 21            *funds as authorized by the biennial budget.*

22            (4) Moneys in the fund shall be for carrying out the purpose provided in subsection (1)  
 23            of this section, including any administrative costs *incurred by the cabinet during*  
 24            *the implementation of* ~~set forth in~~ this section and KRS 353.561, 353.563, and  
 25            353.564. The fund may receive moneys from federal and state grants or  
 26            appropriations, and from any other proceeds *received* for the purposes of this  
 27            section and KRS 353.561, 353.563, and 353.564.

1 (5) (a) Funds may be expended for costs incurred in the:

2 1. Reclamation of abandoned storage tank facilities;

3 2. Proper plugging, reclamation, and abandonment of eligible wells; or

4 3. Proper reclamation and abandonment of abandoned storage tank  
5 facilities posing an imminent threat.

6 (b) These funds may be expended in accordance with this section and after the  
7 cabinet determines that:

8 1. The well qualifies as an eligible well as defined in Section 1 of this  
9 Act;

10 2. There is no person identified or found with continuing legal  
11 responsibility for the abandoned storage tank facility; or

12 3. Reclamation or remedial measures are necessary to respond to an  
13 imminent threat to human health, safety, or the environment, posed by  
14 an abandoned storage tank facility or improperly abandoned well<sup>[(4)]</sup>

15 ~~— Funds expended for costs incurred in reclaiming abandoned~~  
16 ~~storage tank facilities shall be in accordance with the provisions of this~~  
17 ~~section and after the cabinet deems that:~~

18 ~~(a) There is no person identified or found with continuing legal responsibility for~~  
19 ~~the abandoned storage tank facility; or~~

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

22 (6)<sup>[(5)]</sup> Reclamation measures paid for by the fund shall include the following:

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

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

25 1. Proper removal or abandonment of~~aboveground~~ flow lines;

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

- 1           3. Elimination of all berms, dikes, and other structures utilized as spill  
2           prevention, control, and countermeasure structures;~~and~~
- 3           4. Grading, stabilization, and seeding of the surface where the tank or tank  
4           battery was located; and
- 5           5. Implementation of best management practices at sites associated with  
6           abandoned storage facilities; and

7           (c) Reclamation of lands affected by eligible wells, including:

- 8           1. Proper removal or abandonment of flow lines;
- 9           2. Removal and disposal of surface production equipment;
- 10          3. Grading, stabilization, and seeding of the surface where the well was  
11          located;
- 12          4. Implementation of best management practices at sites associated with  
13          eligible wells; and
- 14          5. Removal or treatment of contaminated soil to no more than three (3)  
15          feet in depth.

16       ~~(7)~~~~(6)~~ If during the course of removing and reclaiming an abandoned storage tank  
17       facility or plugging and reclaiming an eligible well, the division observes evidence  
18       of soil contamination below three (3) feet depth, the division shall consult with the  
19       Department for Environmental Protection to determine whether further action is  
20       necessary to protect public health and the environment. Nothing contained in this  
21       section shall be construed to obligate the fund to provide additional moneys for  
22       removal or treatment of contaminated soil other than provided in subsection (6)(b)2.  
23       and (c)5.~~(5)(b)2.~~ of this section.

24       ~~(8)~~~~(7)~~ Any person performing reclamation measures pursuant to this section shall  
25       comply with applicable local, state, and federal laws and regulations.

26       ~~(9)~~~~(8)~~ The cabinet shall have the authority to:

- 27       (a) Contract for services provided by and engage in cooperative projects with

- 1 other government agencies or private parties in the furtherance of any  
 2 remedial or reclamation project authorized and undertaken pursuant to this  
 3 section, KRS 353.561, and Sections 3 and 4 of this Act~~[for the remediation,~~  
 4 ~~cleanup, and disposal of abandoned storage tanks];~~
- 5 (b) Enter into agreements with those government agencies or private parties to  
 6 compensate those agencies and private parties with funds from the account;  
 7 and
- 8 (c) Accept and deposit into the fund any federal, state, and other funds for the  
 9 purposes of, KRS 353.561, and Sections 3 and 4 of this Act~~[this section and~~  
 10 ~~KRS 353.6603, 353.6605, and 353.6606].~~

11 ➔Section 3. KRS 353.563 is amended to read as follows:

- 12 (1) The cabinet and its authorized representatives, agents, and contractors shall have the  
 13 right and authority to enter upon property threatened by an abandoned storage tank  
 14 facility or improperly abandoned well and to access any other property for the  
 15 purpose of plugging and reclaiming an improperly abandoned well or the removal  
 16 and reclamation of the abandoned storage tank facility if the cabinet makes a  
 17 determination~~[finding of fact]~~ that:
- 18 (a) An abandoned storage tank facility or improperly abandoned well poses an  
 19 imminent~~[a]~~ threat to human health, safety, or~~[and]~~ the environment under  
 20 subsection (5)(b)3. of Section 2 of this Act~~[KRS 353.562(4)(b) and is eligible~~  
 21 ~~to be enrolled in the Kentucky Abandoned Storage Tank Reclamation~~  
 22 ~~Program];~~
- 23 (b) ~~[The cabinet determines that ]~~Action should be taken in the public interest~~[~~  
 24 ~~should be taken]~~ to dispose of the abandoned storage tank facilities or to  
 25 properly plug and abandon the well and to reclaim the lands threatened by  
 26 the abandoned storage tank facilities or the well; and
- 27 (c) 1. The owner or owners of the property are not known or are not readily

1 available; or

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

5 (2) Prior to entry on the land for the purpose of conducting **plugging or** remediation  
6 **operations**, the cabinet shall give notice by mail to the all owners of the **surface**  
7 property, if known. If the owners are unknown, then the cabinet shall post notice  
8 upon the premises and shall advertise once in a newspaper of general circulation in  
9 the municipality or county in which the land where the **well or** abandoned storage  
10 tank facilities are located. **The advertisement shall occur at least seven (7) days**  
11 **prior to entry unless exigent circumstances exist necessitating the cabinet or its**  
12 **agents, employees, or contractors to enter upon the property as soon as possible**  
13 **in order to mitigate or prevent an imminent threat to human health, safety or the**  
14 **environment.**

15 (3) Additionally, the cabinet and its authorized representatives, agents, and contractors  
16 shall have the right to enter upon any property for the purpose of conducting field  
17 inspections or investigations to determine the:

18 **(a)** Existence and status of **eligible wells and** abandoned storage tank facilities;  
19 and ~~to determine the~~

20 **(b)** Feasibility of **plugging, remediation,** removal, and reclamation of the **eligible**  
21 **well or** abandoned storage tank facility.

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

26 (5) The cabinet may initiate, in addition to any other remedies provided in KRS  
27 Chapter 353, in any court of competent jurisdiction, an action in equity for an

1 injunction to restrain any interference with the exercise of the right to enter or to  
2 conduct any work authorized under this section and KRS 353.561, 353.562, and  
3 353.564.

4 (6) Any person who intends to remove an abandoned storage tank facility shall:  
5 (a) Notify the cabinet before undertaking the removal;  
6 (b) Do so at his or her own risk and expense; and  
7 (c) Bear sole responsibility for complying with all applicable local, state, and  
8 federal laws and regulations during the removal, disposal, and reclamation of  
9 the site.

10 (7) Nothing in this section shall be construed as an additional grant of authority for any  
11 person or entity other than the cabinet or the cabinet's agents to take action under  
12 this section and KRS 353.561, 353.562, and 353.564.

13 ➔Section 4. KRS 353.564 is amended to read as follows:

14 (1) (a) Any prior owner or the surface owner shall be deemed to have waived any  
15 right to any equipment or product remaining at the site of an orphan well or  
16 abandoned storage tank facility at the time of plugging, removal, or  
17 reclamation by the cabinet or its contractors pursuant to this section, KRS  
18 353.561, or Section 2 or 3 of this Act because of the abandonment or  
19 neglect of the facility being plugged, removed, or reclaimed with public  
20 moneys from the Kentucky abandoned storage tank and orphan well  
21 reclamation fund established in Section 2 of this Act.

22 (b) Pursuant to paragraph (a) of this subsection, the cabinet or its agents may  
23 include as part of the plugging, removal, reclamation or remediation  
24 contract all equipment or products removed from that orphan well or  
25 abandoned storage tank facility for sale, recycling, or disposal.

26 (2) The cabinet shall have the authority to recover actual and necessary expenditures,  
27 including administrative costs, reasonably incurred in carrying out the duties of this



1 section and KRS 353.561, 353.562, and 353.563 from:

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

4 (b) Any other party legally responsible for causing or contributing to a threat to  
5 human health, safety, and the environment that the Commonwealth incurred  
6 as costs or expenses under this section and KRS 353.561, 353.562, and  
7 353.563.

8 ~~(3)(2)~~ The cabinet may initiate an action for reimbursement of costs in any court of  
9 competent jurisdiction. The recovery of any costs under this section and KRS  
10 353.563 shall be credited to the Kentucky abandoned storage tank **and orphan well**  
11 reclamation fund except for recovered administrative costs which shall be retained  
12 by the cabinet.

13 ~~(4)(3)~~ The cabinet may not seek reimbursement from the landowner for costs  
14 incurred under this section and KRS 353.563 unless the landowner qualifies as the  
15 last known owner or operator under subsection ~~(2)(a)(1)(a)~~ of this section or  
16 caused or contributed to a threat under subsection ~~(2)(b)(1)(b)~~ of this section.

17 ~~(5)(a)(4)~~ Expenditures of moneys from the fund for the purposes established in  
18 **subsections (5) and (6) of Section 2 of this Act**~~[KRS 353.562(4) and (5)]~~  
19 shall be prioritized in the following order:

20 ~~1.(a)~~ **Eligible wells and** abandoned storage tank facilities that are an  
21 imminent threat to human health, safety, ~~or~~~~and~~ the environment~~—as~~  
22 ~~evidenced by leaking tanks, berms, or dikes near dwellings, streams,~~  
23 ~~rivers, water bodies, or other sensitive areas];~~

24 ~~2.(b)~~ Abandoned storage tank facilities **and orphan wells** that **could**  
25 pose a threat to human health, safety, ~~or~~~~and~~ the environment as  
26 evidenced by the~~—facilities]~~ proximity to structures, streams, rivers,  
27 water bodies, or other sensitive areas; and

1           ~~3.1(c)~~ Abandoned storage tank facilities **and orphan wells** that **could**  
2           pose a potential threat to human health, safety, ~~or~~ and the environment.

3           **(b) The cabinet may address any abandoned storage tank facility or eligible**  
4           **well, regardless of priority, if doing so would be cost-efficient or otherwise**  
5           **create a demonstrable benefit for the public at large.**

6           **(c) The cabinet may promulgate administrative regulations pursuant to KRS**  
7           **Chapter 13A in order to provide further detail related to the ranking of**  
8           **wells and abandoned storage tank facilities for plugging, removal,**  
9           **remediation, and reclamation.**

10          ➔Section 5. KRS 353.590 is amended to read as follows:

11          (1) Any person seeking a permit required by KRS 353.570 shall submit to the  
12          department a written application in a form prescribed by the department. **A person**  
13          **under eighteen (18) years old shall not be eligible for a permit issued under this**  
14          **chapter.**

15          (2) Each application shall be accompanied by a specified fee as follows:

16           (a) The fee shall be three hundred dollars (\$300) for each well to be drilled,  
17           deepened, or reopened for any purpose relating to the production,  
18           repressuring, or storage of oil or gas, and for each water supply well,  
19           observation well, and geological or structure test hole.

20           (b) If the department receives delegation of authority for administration of the  
21           underground injection control program under Section 1425 of the Safe  
22           Drinking Water Act (Pub. L. 93-523 as amended), the department may, by  
23           administrative regulation, establish a fee or schedule of fees in an amount not  
24           to exceed fifty dollars (\$50) per well, in addition to the fees imposed by  
25           paragraph (a) of this subsection, upon each application to drill, deepen, or  
26           reopen a well for any purpose relating to the production, repressuring, or  
27           storage of oil or gas, and for each water supply well, observation well, and

1 geological or structure test hole. The fees or schedule of fees to be established  
2 by administrative regulation shall not exceed an amount sufficient to recover  
3 the costs incurred by the department in administering the Underground  
4 Injection Control Program less any other state or federal funds which are made  
5 available for this purpose.

6 (c) All money paid to the State Treasurer for fees required by paragraph (b) of  
7 this subsection shall be for the sole use of the department in the administration  
8 of the Underground Injection Control Program under Section 1425 of the Safe  
9 Drinking Water Act (Pub. L. 93-523 as amended).

10 (3) Applications for each deep well shall be assessed a fee according to the following  
11 schedules:

12 (a) For a vertical deep well:

- 13 1. With a total vertical depth of seven thousand (7,000) feet or less, the fee  
14 shall be five hundred dollars (\$500); and
- 15 2. With a total vertical depth greater than seven thousand (7,000) feet, the  
16 fee shall be six hundred dollars (\$600); and

17 (b) For a horizontal deep well:

- 18 1. With a total measured well depth of ten thousand (10,000) feet or less,  
19 the fee shall be five thousand dollars (\$5,000);
- 20 2. With a total measured well depth greater than ten thousand (10,000)  
21 feet, the fee shall be six thousand dollars (\$6,000); and
- 22 3. Five hundred dollars (\$500) for each additional lateral.

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

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

27 (b) Four thousand dollars (\$4,000) for a total measured well depth greater than

1 ten thousand (10,000) feet.

2 (5) All money paid to the State Treasurer for licenses and fees required by KRS  
3 353.500 to 353.720 shall be for the sole use of the department and shall be in  
4 addition to any moneys appropriated by the General Assembly for the use of the  
5 department.

6 (6) Each application shall be accompanied by a plat, which shows the location and  
7 elevation of each well, prepared according to the administrative regulations  
8 promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate  
9 and correct by a professional land surveyor licensed in accordance with the  
10 provisions of KRS Chapter 322.

11 (7) When any person submits to the department an application for a permit to drill a  
12 shallow well, or to reopen, deepen, or temporarily abandon any well which is not  
13 covered by surety bond, the department shall, except as provided in this section,  
14 require from the shallow well operator the posting of a bond. For any well permit  
15 issued after the effective date of this Act, the department shall require two dollars  
16 (\$2) of bond amount for every foot of true vertical well depth. For applications  
17 for well transfers filed after the effective date of this Act, pursuant to subsection  
18 (23) of this section, bonding shall be two dollars (\$2) for every foot of true vertical  
19 well depth and shall be posted by the transferee operator. Failure to post the  
20 required bond shall result in an order issued by the department:

21 (a) Requiring the proper plugging and abandonment of the shallow well or  
22 wells; or

23 (b) Refusing to transfer the requested shallow well or wells. ~~Bonds for deep~~  
24 ~~wells are posted for the purpose of ensuring well plugging and reclamation of~~  
25 ~~disturbed areas. The bond for plugging shallow wells shall be posted in~~  
26 ~~accordance with the following schedule:~~

27 ~~Well Depth.....Bond Amount~~

|    |                                  |             |
|----|----------------------------------|-------------|
| 1  | — 0 to 500 feet .....            | \$500.00    |
| 2  | — 501 feet to 1,000 feet .....   | \$1,000.00  |
| 3  | — 1,001 feet to 1,500 feet ..... | \$1,500.00  |
| 4  | — 1,501 feet to 2,000 feet ..... | \$2,000.00  |
| 5  | — 2,001 feet to 2,500 feet ..... | \$2,500.00  |
| 6  | — 2,501 feet to 3,000 feet ..... | \$3,000.00  |
| 7  | — 3,001 feet to 3,500 feet ..... | \$3,500.00  |
| 8  | — 3,501 feet to 4,000 feet ..... | \$4,000.00  |
| 9  | — 4,001 feet to 4,500 feet ..... | \$5,000.00  |
| 10 | — 4,501 feet to 5,000 feet ..... | \$6,000.00  |
| 11 | — 5,001 feet to 5,500 feet ..... | \$7,000.00  |
| 12 | — 5,501 feet to 6,000 feet ..... | \$8,000.00] |

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

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

21 (10) (a) All bonds required to be posted prior to the effective date of this Act under  
 22 this section for plugging shallow wells shall:

- 23 1. Be made in favor of the department;
- 24 2. Be conditioned that the wells, upon abandonment, shall be plugged in  
 25 accordance with the administrative regulations of the department and  
 26 that all records required by the department be filed as specified; and
- 27 3. Remain in effect until the plugging of the well is approved by the

1 department, or the bond is released or forfeited by the department.

2 (b) All bonds required to be posted after the effective date of this Act under this  
 3 section for plugging shallow wells shall:

4 1. Be made in favor of the department;

5 2. Be conditioned on the wells, upon abandonment, being plugged and  
 6 the disturbed areas reclaimed in accordance with applicable statutes  
 7 and the administrative regulations promulgated thereunder, and on all  
 8 records required by the department being filed as specified; and

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

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

14 1. Be made in favor of the department;

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

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

22 (11) An operator may petition the department to amend the drilling depth and bond  
 23 amount applicable to a particular well and shall not proceed to drill to a depth  
 24 greater than that authorized by the department until the operator is so authorized,  
 25 except pursuant to administrative regulations promulgated by the department.

26 (12) (a) Any shallow well blanket bond filed by an operator prior to the effective  
 27 date of this Act shall remain in effect until the plugging or transfer of all

1 the wells secured by the blanket bond, or the blanket bond is released or  
 2 forfeited by the department. In the event that a number of the wells are  
 3 plugged, transferred, or both, that result in the operator being eligible for a  
 4 blanket bond in a lower amount, the department shall release the bond to a  
 5 lower amount based upon the tiered structure in existence at the time the  
 6 bond was issued. After the effective date of this Act, in the event that an  
 7 operator with a shallow well blanket bond that was filed prior to the  
 8 effective date of this Act drills or acquires additional wells and has  
 9 remaining capacity on the blanket bond after the effective date of this Act,  
 10 the operator may secure such wells with the existing blanket bond up to the  
 11 limits of the bond. However, the number of wells that are eligible to be  
 12 covered by a blanket bond filed prior to the effective date of this Act that  
 13 were in a tier with more than five hundred (500) wells shall be limited to  
 14 one thousand (1,000) wells[Any qualified shallow well operator, in lieu of the  
 15 individual bond, may file with the department a blanket bond according to the  
 16 following tiered structure:

- 17 1. ~~One (1) to twenty five (25) wells require a ten thousand dollar (\$10,000)~~  
 18 ~~bond;~~
- 19 2. ~~Twenty six (26) to one hundred (100) wells require a twenty five~~  
 20 ~~thousand dollar (\$25,000) bond;~~
- 21 3. ~~One hundred one (101) to five hundred (500) wells require a fifty~~  
 22 ~~thousand dollar (\$50,000) bond; and~~
- 23 4. ~~Five hundred one (501) or more wells require a one hundred thousand~~  
 24 ~~dollar (\$100,000) bond].~~

- 25 (b) After the effective date of this Act, any[~~nonqualified~~] shallow well operator,  
 26 in lieu of an individual bond, may file with the department a blanket bond  
 27 according to the following tiered structure:

- 1           1. One (1) to twenty-five (25) wells require a twenty thousand dollar  
 2           (\$20,000)~~one hundred (100) wells require a fifty thousand dollar~~  
 3           ~~(\$50,000)~~ bond; ~~and~~  
 4           2. Twenty-six (26) to one hundred (100) wells require an additional thirty  
 5           thousand dollar (\$30,000) bond;  
 6           3. One hundred one (101) to five hundred (500) wells require an  
 7           additional one hundred fifty thousand dollar (\$150,000) bond; and~~or~~  
 8           ~~more wells require a one hundred thousand dollar (\$100,000) bond]~~  
 9           4. Five hundred one (501) to one thousand (1,000) wells require an  
 10           additional one hundred thousand dollar (\$100,000) bond.

11           (c) After the effective date of this Act, well operators who have more wells than  
 12           can be accommodated by the blanket bonding structure established in  
 13           paragraph (b) of this subsection or as in effect pursuant to paragraph (a) of  
 14           this subsection may, in lieu of individual bonds, incrementally increase the  
 15           amount of their blanket bonds filed with the department according to the  
 16           tiers established in paragraph (b) of this subsection. Nothing contained in  
 17           this subsection shall require a well operator with a blanket bond in  
 18           existence prior to the effective date of this Act to increase the amount of its  
 19           blanket bond as to the wells covered by the existing blanket bond.

20           (13)~~To qualify for a blanket bond for a shallow well under the tiered structure set forth~~  
 21           ~~in subsection (12)(a) of this section, an operator shall:~~

22           ~~(a) Have a blanket bond in place filed with the department prior to July 15, 2006,~~  
 23           ~~and have no outstanding, unabated violations of KRS Chapter 353 or~~  
 24           ~~regulations adopted pursuant thereto which have not been appealed;~~

25           ~~(b) Demonstrate for a period of thirty six (36) months prior to the request for~~  
 26           ~~blanket bonding a record of compliance with the statutes and administrative~~  
 27           ~~regulations of the division; or~~



1           ~~(c) Provide proof of financial ability to plug and abandon wells covered by the~~  
2           ~~blanket bond.~~

3 ~~(14) In addition to the requirements set forth in subsection (15) of this section, proof of~~  
4 ~~financial ability set forth in subsection (13)(c) of this section shall be established by~~  
5 ~~an audited financial statement that satisfies at least two (2) of the following ratios:~~

6           ~~(a) A ratio of total liabilities to net worth less than two (2); or~~

7           ~~(b) A ratio of the sum of net income plus depreciation, depletion, and~~  
8           ~~amortization to total liability greater than one tenth (0.1); or~~

9           ~~(c) A ratio of current assets to current liabilities greater than one and five tenths~~  
10           ~~(1.5).~~

11 ~~(15)~~ If the operator is a corporate subsidiary, the operator further shall provide a  
12 corporate guarantee in which the guarantor shall be the parent corporation of the  
13 operator of the wells covered under the bond. The corporate guarantee shall  
14 provide:

15           (a) That if the operator fails to perform with the proper plugging and  
16 abandonment of any well covered by the blanket bond, the guarantor shall do  
17 so or provide for alternate financial assurance; and

18           (b) The corporate guarantee shall remain in force unless the guarantor sends  
19 notice of the cancellation by certified mail to the operator and to the  
20 department. Cancellation shall not occur, however, during the one hundred  
21 twenty (120) day period beginning on the first day that both the operator and  
22 the department have received notice of cancellation, as evidenced by the  
23 certified mail return receipts.

24 ~~(14)~~~~(16)~~ An operator shall not be eligible to file a new~~for~~ blanket bond or add  
25 additional wells to an existing blanket bond~~bonding~~ if the operator has:

26           ~~(a) More than ten (10) violations of KRS Chapter 353 or the regulations adopted~~  
27           ~~pursuant thereto within the thirty-six (36) month period;~~

1       ~~(b)~~ Any outstanding, unabated violations of KRS Chapter 353 or the regulations  
2           adopted pursuant thereto which have not been appealed;

3       ~~(b)~~~~(c)~~ A forfeiture of a bond, whether an individual bond or portion of a  
4           blanket bond, on any permit where the operator has not entered into an agreed  
5           order with the department for the plugging and proper abandonment of the  
6           well or wells on the forfeited permit or permits; or

7       ~~(c)~~~~(d)~~ A permit or permits, upon which a bond or portion of a bond has been  
8           forfeited and the proceeds from the forfeiture have been spent by the  
9           department to plug or reclaim the permitted well or wells, unless the operator  
10          has made restitution to the department for all costs associated with the  
11          forfeiture, plugging, and proper abandonment.

12       ~~(15)~~~~(17)~~ Any deep well operator, in lieu of an individual bond, may file with the  
13          department a blanket bond according to the following:

14          (a) One (1) to ten (10) vertical deep wells require a two hundred thousand dollar  
15             (\$200,000) bond; and

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

18       ~~(16)~~~~(18)~~ A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu  
19          of either of the individual well or blanket bonds.

20       ~~(17)~~~~(19)~~ Individuals acquiring a single well for domestic use may post a combination  
21          bond which shall consist of a cash bond in the amount of one thousand dollars  
22          (\$1,000) plus a lien on the property to cover future plugging costs. Only one (1)  
23          combination bond may be posted by each individual.

24       ~~(18)~~~~(20)~~ A certificate of deposit, the principal of which is pledged in lieu of a bond and  
25          whose interest is payable to the party making the pledge, may serve for an  
26          individual well bond. A certificate of deposit, the principal of which is pledged in  
27          lieu of a bond and whose interest is payable to the party making the pledge, may

1 serve for a blanket bond, provided that the first five thousand dollars (\$5,000) of the  
2 blanket bond is posted with the department in cash.

3 ~~(19)~~~~(21)~~ The bond or bonds referred to in this section shall be executed by the well  
4 operator as principal and, if a surety bond, by a corporate surety authorized to do  
5 business in the Commonwealth.

6 ~~(20)~~~~(22)~~ A deposit in cash shall serve in lieu of either of the above bonds; all cash  
7 bonds accepted by the department shall be deposited into an interest-bearing  
8 account, with the interest thereon payable to the special agency account known as  
9 the oil and gas well plugging fund, created in subsection ~~(27)~~~~(28)~~ of this section,  
10 to be used in accordance with the purposes described therein. All cash bonds being  
11 held by the department on July 13, 1990, shall likewise be deposited in the interest-  
12 bearing account, with the proceeds to be used for the purposes established for the  
13 oil and gas well plugging fund.

14 ~~(21)~~~~(23)~~ The bond amounts prescribed by subsection (7) of this section shall be  
15 applicable only to permits issued after the effective date of this Act~~upon and after~~  
16 ~~July 15, 2006~~. All bonds posted for permits issued prior to the effective date of this  
17 Act~~July 15, 2006~~, shall remain in full force and effect for the duration of the  
18 permits secured by the bonds.

19 ~~(22)~~~~(24)~~ The blanket bond amounts prescribed by subsection (12) of this section shall  
20 be effective after the effective date of this Act~~upon and after July 15, 2006~~. Any  
21 operator having filed a blanket bond with the department prior to the effective date  
22 of this Act, in the event that the capacity of the bond is reached~~July 15, 2006~~,  
23 may at its discretion increase the level of the blanket bond incrementally by  
24 increasing the blanket bond by the amount of the individual bond prescribed by  
25 subsection (12) of this section on any wells drilled subsequent to the effective date  
26 of this Act~~July 15, 2006~~, until the blanket bond has reached the level necessary to  
27 conform to the tiers prescribed by subsection (12) of this section.

1 (23) (a)~~(25)~~ Prior to commencing use or operation of a well or wells operated in  
2 the name of a different operator, a well operator seeking to become a  
3 successor operator shall file an application to transfer the well or wells  
4 executed by both the current operator and the applicant, pay a fee of fifty  
5 dollars (\$50) per well to the department, and post the appropriate bond.

6 (b) 1. Upon receipt of a request for a well records report made by an  
7 operator seeking to become a successor operator and approved by the  
8 current operator, the department shall print a well records report of  
9 the wells requested and provide the report to both the current operator  
10 and the operator seeking to become a successor operator.

11 2. If the report indicates the existence of outstanding violations or of  
12 missing records required to be filed pursuant to this chapter, on any  
13 application to transfer a well or wells filed within thirty (30) days of  
14 the date of the well report, the successor operator may decline to  
15 accept transfer of any wells with outstanding violations or with  
16 missing records, or may agree to accept responsibility for abatement of  
17 the violations or the filing of the missing records.

18 3. Based upon the successor operator's response to the well record report  
19 and subject to bonding requirements and the provisions of Section 11  
20 of this Act, the department shall approve the transfer of the requested  
21 well or wells or any portion thereof not declined by the successor  
22 operator.

23 4. The department may not hold a successor operator responsible or  
24 liable for missing records not disclosed on the well record report  
25 provided by the department prior to transfer, or for missing records  
26 that which were not filed or completed by a previous operator and for  
27 which information necessary to complete the records is not reasonably

1 available.

2 (c) Subject to Section 11 of this Act, upon receipt of written approval of the  
 3 requested transfer, the successor operator shall assume the obligations of  
 4 this chapter as to the particular well or wells and relieve the current  
 5 operator of responsibility under this chapter with respect to the well or  
 6 wells transferred. It shall be the responsibility of the current operator to  
 7 ensure that the successor operator has complied with the requirements of  
 8 this subsection before relinquishing operations to the successor operator  
 9 and before relief of responsibility under this chapter is granted to the  
 10 current operator. The current operator shall remain responsible, and its  
 11 bond shall not be released, on any well or wells with an outstanding  
 12 violation or missing records for which a successor operator declined to  
 13 accept a transfer[A successor to the well operator shall post bond, pay a  
 14 twenty five dollar (\$25) fee per well to the department, and notify the  
 15 department in writing in advance of commencing use or operation of a well or  
 16 wells. The successor shall assume the obligations of this chapter as to a  
 17 particular well or wells and relieve the original permittee of responsibility  
 18 under this chapter with respect to the well or wells. It shall be the  
 19 responsibility of the selling operator to require the successor operator to post  
 20 bond before use or operation is commenced by the successor and relief of  
 21 responsibility under this chapter is granted to the original permittee].

22 (24) [(26)] If the requirements of this section with respect to any provision of KRS  
 23 353.500 to 353.720 or 353.735 to 353.747, or any administrative regulation or  
 24 order promulgated or issued thereunder,[proper plugging upon abandonment and  
 25 submission of all required records on all well or wells] have not been complied with  
 26 within the time limits set by the department, by administrative regulation, or by this  
 27 chapter, the department shall cause a notice of noncompliance to be served upon the

1 operator by certified mail, addressed to the permanent address shown on the  
2 application for a permit.

3 (a) The notice shall specify in what respects the operator has failed to comply  
4 with this chapter or the administrative regulations of the department.

5 (b) If, within forty-five (45) days after mailing of the notice of noncompliance, no  
6 agreement has been reached with the department regarding the alleged failure  
7 to comply, and the director determines that the operator has not complied with  
8 the requirements set forth by the department, the bond shall be ordered  
9 forfeited to the department. The forfeiture order shall become effective thirty  
10 (30) days after the department gives the operator notice of the order, unless a  
11 petition has been filed pursuant to KRS 353.700, in which case the forfeiture  
12 order shall only become effective upon a final determination of the secretary  
13 affirming the forfeiture order following the conclusion of the petition process.

14 **(25) (a) In addition to a notice of noncompliance issued pursuant to subsection (24)**  
15 **of this section, the cabinet may issue a well closure order to any person or**  
16 **operator where:**

17 **1. An oil and gas well is in violation of KRS 353.500 to 353.720 or**  
18 **353.735 to 353.747, or any administrative regulation or order**  
19 **promulgated or issued thereunder, and the violation is causing or**  
20 **could be reasonably expected to cause an imminent threat to human**  
21 **health, safety, or the environment; or**

22 **2. The operation of an oil and gas well by any person without first**  
23 **posting bond.**

24 **(b) The well closure order shall be affixed by a red tag marker to the wellhead**  
25 **with a letter of violation and a copy of the well closure order mailed to the**  
26 **address of record for the responsible person or operator, if an address is on**  
27 **file with the division. The letter of violation and well closure order shall**

1 notify the person or operator to immediately:

2 1. Cease operation of the well; and

3 2. Abate the violation of KRS 353.500 to 353.720 or 353.735 to 353.747,  
 4 or any administrative regulation or order promulgated or issued  
 5 thereunder.

6 (c) Any person operating a well under the circumstances described in  
 7 paragraph (a)2. of this subsection may be ordered to properly plug and  
 8 abandon the well, but such order does not relieve any prior obligation owed  
 9 by the current operator of record pursuant to KRS 353.180. The well  
 10 closure order may be appealed pursuant to KRS 353.700 within thirty (30)  
 11 days of issuance.

12 ~~(26)~~~~(27)~~ A bond forfeited pursuant to the provisions of this chapter may be collected by  
 13 an attorney for the department or by the Attorney General, after notice from the  
 14 director.

15 ~~(27)~~~~(28)~~ All sums received~~[under this section or]~~ through the forfeiture of bonds shall  
 16 be placed in the State Treasury and credited to a special agency account to be  
 17 designated as the oil and gas well plugging fund, which shall be an interest-bearing  
 18 account with the interest thereon payable to the fund. This fund shall be available to  
 19 the department and shall be expended for the plugging of any abandoned wells  
 20 coming within the authority of the department pursuant to this chapter. The  
 21 plugging of any well pursuant to this subsection shall not be construed to relieve the  
 22 operator or any other person from civil or criminal liability which would exist  
 23 except for the plugging. Any unencumbered and any unexpended balance of this  
 24 fund remaining at the end of any fiscal year shall not lapse but shall be carried  
 25 forward for the purpose of the fund until expended or until appropriated by  
 26 subsequent legislative action.

27 ~~(28)~~~~(29)~~ (a) Any permitted stratigraphic test well:

- 1           1. Is subject to all requirements under this section and KRS 353.5901,  
2           353.550, 353.610, and 353.660(1) and (4) as if the stratigraphic test well  
3           were defined as a "well" in KRS 353.510(14); and
- 4           2. Shall be plugged within one hundred eighty (180) days of completion of  
5           drilling the well.
- 6           (b) A stratigraphic test well shall be permitted as an oil and gas production well  
7           prior to:
- 8           1. Producing oil or gas; or  
9           2. Deviating from true vertical.
- 10          (c) Any stratigraphic test well converted to an oil or gas production well under  
11          paragraph (b) of this subsection shall be subject to the requirements of KRS  
12          353.660(1) to (3).
- 13          (29)~~[(30)]~~ For the purpose of this chapter, "water supply well" shall not include:
- 14          (a) Any well for a potable water supply for domestic use or for livestock; or  
15          (b) Any water well used primarily for cooling purposes in an industrial process.
- 16          ~~[(31) Notwithstanding the provisions of KRS Chapter 353 or this section, no operator~~  
17          ~~shall be eligible to receive additional permits if that operator or any entity in which~~  
18          ~~it has an ownership interest has:~~
- 19          ~~(a) Any outstanding, unabated violations of KRS Chapter 353 or the regulations~~  
20          ~~adopted pursuant thereto, which have not been appealed;~~
- 21          ~~(b) A forfeiture of a bond, whether an individual bond or portion of a blanket~~  
22          ~~bond, on any permit where the operator has not entered into an agreed order~~  
23          ~~with the department for the plugging and proper abandonment of the well or~~  
24          ~~wells on the forfeited permit or permits; or~~
- 25          ~~(c) A permit or permits upon which a bond or portion of a bond has been~~  
26          ~~forfeited, and the proceeds therefrom having been spent by the department to~~  
27          ~~plug or reclaim the permitted well, or wells, unless the operator has made~~



1           ~~restitution to the department for all costs associated with the forfeiture,~~  
2           ~~plugging, and proper abandonment.]~~

3     **(30)**~~[(32)]~~ Any order or final determination of the department under this section shall be  
4           subject to review in accordance with KRS 353.700 and any administrative  
5           regulations promulgated thereunder.

6           ➔Section 6. KRS 353.593 is amended to read as follows:

7     Appeals may be taken from all final orders of the department to issue, deny, modify, or  
8     revoke any permit under the Underground Injection Control Program. Appeals shall be  
9     taken to the *cabinet's Office of Administrative Hearings*~~[Circuit Court of the county in~~  
10    ~~which the well is located or proposed to be located in accordance with KRS Chapter~~  
11    ~~13B].~~

12          ➔Section 7. KRS 353.655 is amended to read as follows:

13    ~~[(1)]~~No operator shall utilize shackle rods or related cables for the production of oil or  
14    gas~~[ without the permission of the present owner of the land upon which the wells exist~~  
15    ~~or are drilled unless such rods or cables are placed in conduit and buried at least twenty-~~  
16    ~~four (24) inches below the surface of the land between all wellheads and power stations~~  
17    ~~or are attached to power poles with the rods or cables twenty (20) feet above the surface~~  
18    ~~of the land between all wellheads and power stations.~~

19    ~~(2) Nothing in this section shall apply to lands classified by the United States Soil~~  
20    ~~Conservation Service as class 5, 6, 7, or 8].~~

21          ➔Section 8. KRS 353.710 is amended to read as follows:

22    (1) Whenever it appears that any person is violating or threatening to violate any  
23    provision of KRS 353.500 to 353.720, or any rule, regulation or order promulgated  
24    or issued under KRS 353.500 to 353.720, the department may bring suit against the  
25    person in the *Franklin Circuit Court, or the* Circuit Court of the county where the  
26    violation occurred or is threatened, or in the county in which the defendant resides  
27    or in which any defendant resides if there is more than one (1) defendant, to restrain

1 the person from continuing the violation or from carrying out the threatened  
2 violation. In such a suit the court shall have jurisdiction to grant without bond or  
3 other undertaking the prohibitory or mandatory injunction as the facts may warrant,  
4 including a temporary restraining order or injunction.

5 (2) If the department shall fail to bring suit to enjoin a violation or threatened violation  
6 of any provisions of KRS 353.500 to 353.720, or any rule, regulation, or order  
7 promulgated or issued under KRS 353.500 to 353.720 within ten (10) days after  
8 receipt of a written request to do so by any person who is or will be adversely  
9 affected by the violation, the person making the request may bring suit in his own  
10 behalf to restrain the violation or threatened violation in any court in which the  
11 department might have brought suit. The department shall be made a party  
12 defendant in the suit in addition to the person allegedly violating or threatening to  
13 violate a provision of KRS 353.500 to 353.720, or any rule, regulation or order  
14 promulgated or issued under KRS 353.500 to 353.720.

15 (3) Whenever it appears that any person is violating any provision of KRS 353.500 to  
16 353.720, or any rule, regulation or order promulgated or issued hereunder, the  
17 Attorney General or any person who is adversely affected by the violation may  
18 bring suit to restrain the violation in any court in which the department might have  
19 brought suit. The department shall be made a party defendant in the suit in addition  
20 to the person allegedly violating a provision of or any rule, regulation or order  
21 promulgated or issued under KRS 353.500 to 353.720.

22 ➔Section 9. KRS 353.991 is amended to read as follows:

23 (1) Any person who violates **KRS 353.570(1)**~~[any provision of KRS 353.570]~~ shall be  
24 subject to a **civil penalty assessed by the cabinet of not more than one thousand**  
25 **dollars (\$1,000), and the department may require the proper plugging of the well.**  
26 **The civil penalty order may be appealed pursuant to KRS 353.700 within thirty**  
27 **(30) days of assessment. Any person who knowingly and willfully violates KRS**

- 1        **353.570(1) shall upon conviction be guilty of a Class A misdemeanor and subject**  
2        **to a** fine of not more than one thousand dollars (\$1,000) or imprisonment for a term  
3        not exceeding one hundred and eighty (180) days, or both.
- 4        (2) Any person who continues to violate any provision of KRS 353.500 to 353.720 **or**  
5        **353.735 to 353.747**, or any regulation or order promulgated or issued under KRS  
6        353.500 to 353.720 **or 353.735 to 353.747**, after being notified in writing of the  
7        violation by the department shall **upon conviction be guilty of a Class A**  
8        **misdemeanor and** be subject to a fine of not more than one thousand dollars  
9        (\$1,000) or imprisonment for a term not exceeding one hundred and eighty (180)  
10       days, or both.
- 11       (3) Any person who does any of the following for the purpose of evading or violating  
12       KRS 353.500 to 353.720 **or 353.735 to 353.747**, or any regulation or order  
13       promulgated or issued under KRS 353.500 to 353.720 **or 353.735 to 353.747**, shall  
14       **upon conviction be guilty of a Class A misdemeanor and** be subject to a fine of not  
15       more than one thousand dollars (\$1,000) or imprisonment for a term not exceeding  
16       one hundred and eighty (180) days, or both:
- 17       (a) Makes or causes to be made a false entry or statement in a report, record,  
18       account or memorandum, required by KRS 353.500 to 353.720 **or 353.735 to**  
19       **353.747**, or by any regulation or order;
- 20       (b) Omits or causes to be omitted from a report, record, account or memorandum  
21       full, true, and correct entries and information as required by KRS 353.500 to  
22       353.720 **or 353.735 to 353.747**, or by any regulation or order;
- 23       (c) Removes from this Commonwealth or destroys, mutilates, alters or falsifies a  
24       report, record, account or memorandum required by KRS 353.500 to 353.720  
25       **or 353.735 to 353.747**, or by any regulation or order.
- 26       (4) Any person who knowingly aids or abets any other person in the violation of any  
27       provision of KRS 353.500 to 353.720 **or 353.735 to 353.747**, or any regulation or

1 order promulgated or issued under KRS 353.500 to 353.720 or 353.735 to 353.747,  
 2 shall be subject to the same penalty as that prescribed in this section for the  
 3 violation by the other person.

4 (5) All civil penalties recovered under this section shall be deposited into the oil and  
 5 gas well plugging fund established in subsection (27) of Section 5 of this Act and  
 6 shall be for the plugging of any abandoned wells coming within the authority of  
 7 the department pursuant to this chapter~~[Any person who violates the provisions of~~  
 8 ~~KRS 353.655 shall be notified by the department that he has twenty (20) days in~~  
 9 ~~which to remedy the violation. If after the twenty (20) day time period has elapsed~~  
 10 ~~he has failed or refused to comply with the provisions of KRS 353.655, he shall be~~  
 11 ~~subject to a fine of twenty dollars (\$20) a day until the oil or gas well is brought into~~  
 12 ~~compliance].~~

13 ➔Section 10. KRS 353.180 is amended to read as follows:

14 (1) No person shall abandon or remove casings from any oil or gas well, either dry or  
 15 producing, without first plugging the well in a secure manner approved by the  
 16 department and consistent with its administrative regulations. Upon the  
 17 department's plugging of an abandoned well in accordance with the requirements of  
 18 this subsection, the department may sell, by sealed bid, or include as part of  
 19 compensation in the contract for the plugging of the well, all equipment removed  
 20 from that well and deposit the proceeds of the sale into the oil and gas well plugging  
 21 fund, established in KRS 353.590(27)~~[353.590(28)]~~.

22 (2) Not less than thirty (30) days before advertising for bids for the plugging of wells,  
 23 the department shall publish, in a newspaper of general circulation, and in locally  
 24 published newspapers serving the areas in which the wells proposed for plugging  
 25 are located, notices of all wells on which there is salvageable equipment, described  
 26 as to farm name and Carter Coordinate location, for which the department intends to  
 27 seek bids for plugging. If a person other than the operator claims an interest in the

1 equipment of a well proposed for plugging, he shall provide documentation of that  
 2 interest to the department within thirty (30) days of the date of publication of the  
 3 notice of the department's intent to plug a well. Prior to the department's advertising  
 4 of bids for the plugging of a well, the department shall release the well's equipment  
 5 to the person deemed to have an interest in that equipment and it shall be the duty of  
 6 the interest holder to remove the equipment before the well is plugged. If  
 7 documentation as to an asserted interest is not provided to the department in the  
 8 manner described in this subsection or a person deemed to be an interest holder fails  
 9 to remove the equipment before a well is plugged, the department may sell or  
 10 otherwise dispose of the equipment in accordance with this subsection.

11 (3) If a person fails to comply with subsection (1) of this section, any person lawfully in  
 12 possession of land adjacent to the well or the department may enter on the land  
 13 upon which the well is located and plug the well in the manner provided in  
 14 subsection (1) of this section, and may maintain a civil action against the owner or  
 15 person abandoning the well, jointly or severally, to recover the cost of plugging the  
 16 well. This subsection shall not apply to persons owning the land on which the well  
 17 is situated, and drilled by other persons.

18 ➔SECTION 11. A NEW SECTION OF KRS 353.500 TO 353.720 IS CREATED  
 19 TO READ AS FOLLOWS:

20 **(1) The cabinet shall not issue a permit, or approve an application to transfer a well**  
 21 **or wells to a successor operator pursuant subsection (23) of Section 5 of this Act,**  
 22 **and an operator shall not be eligible to receive any permits or become a successor**  
 23 **operator under this chapter, if:**

24 **(a) The applicant has falsified or otherwise misrepresented any information on**  
 25 **or relating to the permit application;**

26 **(b) The applicant has failed to abate or reach an agreement with the cabinet**  
 27 **regarding an unappealed violation of KRS 353.500 to 353.720 or the**

- 1           administrative regulations promulgated thereunder;
- 2           (c) A control person of the applicant has a forfeiture of a bond;
- 3           (d) The applicant is a control person for another operator that has a forfeiture
- 4           of a bond;
- 5           (e) A control person for the applicant served as a control person for another
- 6           operator when an unresolved bond forfeiture occurred; or
- 7           (f) The applicant is or has a control person who controls or is controlled by
- 8           another operator that has a forfeiture of a bond.
- 9           (2) The cabinet may promulgate administrative regulations to allow for the proper
- 10           administration of the compliance review described in this section. The cabinet
- 11           shall restore eligibility for applicants, operators, and control persons who are
- 12           deemed permit-ineligible pursuant to subsection (1)(a) of this section upon the
- 13           resubmission of the application correcting the false or misrepresented
- 14           information. The cabinet shall restore eligibility for applicants, operators, or
- 15           control persons who are deemed permit-ineligible pursuant to subsection (1)(b) of
- 16           this section upon satisfactory abatement of the violation, including payment of
- 17           any civil penalties. The cabinet shall restore eligibility for applicants, operators,
- 18           or control persons who are deemed permit-ineligible pursuant to subsection (1)(c)
- 19           to (f) of this section upon entry and satisfactory compliance of an agreed order
- 20           between the operator and the cabinet that resolves all of the operator's
- 21           outstanding violations, requires payment of any civil penalties, and provides
- 22           restitution to the cabinet for any costs associated with the forfeiture, plugging,
- 23           and proper abandonment of a well in excess of the bonded amount.

24           ➔Section 12. KRS 353.730 is repealed and reenacted as a new section of KRS

25           353.500 to 353.720 to read as follows:

- 26           (1) Any person may investigate an abandoned well upon receipt of approval from the
- 27           department. The person shall submit to the department:

- 1 (a) An application requesting approval to investigate and stating the planned  
2 methods for the investigation. In all cases where there has been a complete  
3 severance of the ownership of the oil and gas from the ownership of the  
4 surface to be disturbed, the application shall include a plan to prevent erosion  
5 and sedimentation;
- 6 (b) A twenty-five dollar (\$25) fee; and
- 7 (c) A certification by the applicant that he has the authority to enter the property  
8 upon which the well is located and to conduct the investigation.
- 9 (2) The department shall review all applications for investigation. If the department  
10 approves the request for investigation, the applicant shall be allowed to produce the  
11 well without a permit as required by KRS 353.570, and the applicant shall submit a  
12 report of investigation to the department on forms provided by the department. In  
13 order to produce the well for more than sixty (60) days, the applicant must obtain a  
14 bond as required by KRS 353.590(7) or (12). Notwithstanding the provisions of  
15 KRS 353.590(2), no fee shall be required for any such well.
- 16 ➔Section 13. KRS 353.570 is amended to read as follows:
- 17 (1) No person shall drill or deepen a well, drill a stratigraphic test well, or reopen a  
18 plugged well for the production of oil or gas or for the injection of water, gas or  
19 other fluid into any oil or gas producing formation (except seismograph test holes)  
20 after June 16, 1960, or drill or deepen a water supply well after June 16, 1966, until  
21 such person shall obtain a permit from the department, except as provided in  
22 Section 12 of this Act~~[KRS 353.730]~~.
- 23 (2) When any applicant for a permit as required by this section has complied with the  
24 provisions of this chapter and all rules and regulations promulgated hereunder, the  
25 department shall issue the permit.
- 26 (3) The department may authorize the commencement of the drilling, deepening or  
27 reopening of any well prior to the issuance of a permit therefor; except if the

1 location of the well is known to be underlaid by a coal-bearing stratum and consent  
2 of the owner, operator, and lessee of the coal-bearing stratum has not been granted.  
3 Consent shall be implied, when the coal-bearing stratum is owned by the oil and gas  
4 lessor or lessee, and the coal is not under lease to any third party.

5 ➔Section 14. Any records for and unexpended balances of appropriations,  
6 allocations, and other moneys in the Kentucky abandoned storage tank reclamation fund  
7 on the effective date of this Act are transferred to the Kentucky abandoned storage tank  
8 and orphan well reclamation fund established in Section 2 of this Act. Any decisions  
9 made or actions taken regarding disbursement of moneys from the Kentucky abandoned  
10 storage tank reclamation fund prior to the effective date of this Act shall remain in effect  
11 until such time as they may be rescinded.