



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Oil and Gas

4 (Amendment)

5 805 KAR 1:170. Content of the operations and reclamation plan [~~proposal; form on which the~~
6 ~~proposal is filed~~].

7 RELATES TO: KRS 353.520, 353.570, 353.590, 353.5901, 353.595, 353.597

8 STATUTORY AUTHORITY: KRS 353.540, 353.550, 353.5901, 353.670

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.5901(1) requires a well
10 operator to submit to the Department for Natural Resources an operations and reclamation plan
11 [~~proposal applicable to all tracts on which there has been a complete severance of the ownership of~~
12 ~~the oil and gas from the ownership of the surface to be disturbed~~]. This administrative regulation
13 specifies the content of the operations and reclamation plan [~~proposal~~], creates the form on which
14 that plan [~~proposal~~] is to be filed, and provides for the form on which well transfers are indicated.

15 Section 1. Definitions. In addition to those set out in KRS 353.510, the following
16 definitions shall apply to this administrative regulation:

17 (1) "Best management practices" or "BMPs" is defined by KRS 353.5901.

18 (2) "Cross drain" means an open ditch, constructed across the roadway, to carry off road
19 surface water and which is not intended to replace culverts or prohibit vehicular traffic.

20 (3)[(2)] "Diversion ditch" means a channel or ridge constructed across a slope for diverting
21 surface runoff.

1 (4)[(3)] "Filter strip" means a natural vegetative strip, left undisturbed, between the
2 disturbed construction area and a water course, and which acts as a buffer area to catch sediment
3 before it enters the water course.

4 (5)[(4)] "Final reclamation" means the date on which the operator has completed his
5 drilling operations at the well site, has plugged the well and has performed all obligations
6 described in the operations and reclamation plan; [~~proposal~~]

7 (6) "Wellsite boundary" shall mean the area of disturbance by an operator, excluding
8 access roads, to drill an oil or gas well.

9 Section 2. (1) The operations and reclamation plan [~~proposal~~] shall be filed on Form ED-
10 10, entitled "Operations and Reclamation Plan" [~~"Plan to Prevent Erosion of and Sedimentation~~
11 ~~from a Well Site"~~].

12 (2) In addition to the requirements set out in KRS 353.5901, the following information
13 shall be submitted on [~~set out on~~] Form ED-10:

14 (a) The operator's and surface owner's names, addresses and telephone numbers, the county
15 in which the well is proposed to be drilled, and the well number; and

16 (b) A listing or description of fertilizers and soil amendments and approved seed mixes or
17 trees to be planted for each affected area requiring revegetation treatment and the types and
18 amounts per acre of seed and trees to be planted; and

19 (c) A detailed map [~~drawing~~] of the road, well location and proposed area of disturbance,
20 which shall be in sufficient detail to allow ready identification of surface features and which shall
21 satisfy the following requirements:

1 1. The surface owner's tract [~~tract(s)~~] shall be identified on the map [~~drawing~~], with the
2 name of the surface owner if not listed on the legend, which map [~~drawing~~] shall also indicate the
3 acreage to be disturbed;

4 2. The map [~~drawing~~] may be made over an enlarged section of the United States
5 Geological Survey (USGS) 1:24000 topographic map, or an equivalent format, and shall [~~may~~] be
6 enlarged to [~~approximately~~] 1"=400' and be submitted on a minimum of an eight and one-half (8
7 1/2) inch by fourteen (14) inches sheet, using the symbols set out on Form ED-10;

8 3. The map [~~drawing~~] shall have a legend with the operator's and surface owner's names not
9 listed on the map, the scale of the map, the well name and number, and the lease name. Within
10 500 feet of the permitted wellsite boundary and 100 feet of the well site access road centerline the
11 map shall show:

12 a. The location of all features listed on the legend of form ED-10;

13 b. All water bodies; and

14 c. When reasonably ascertainable, public utility infrastructure. [~~name and location of all~~
15 ~~streams, rivers, lakes, outstanding state resource waters pursuant to 401 KAR 10:031, or other~~
16 ~~public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools~~
17 ~~and other public buildings; public properties such as, parks, Wildlife Management Areas, and~~
18 ~~nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed~~
19 ~~permit boundary. The map shall also delineate wetlands that may be affected by the proposed~~
20 ~~drilling operation.]~~

21 4. The map shall show the drainage pattern on and away from the area to be affected,
22 including the direction of flow, proposed constructed drainways, natural drainways to be used for
23 drainage, and the streams or tributaries to receive discharges from the proposed operation

1 (3) A signature of the surface owner shall be obtained in instances of a complete severance
2 of the ownership of the oil and gas from the ownership of the surface to be disturbed. Signatory
3 sections for the operator and surface owner shall be completed on Form ED-10 in the following
4 manner:

5 (a) The name and title, if any, of the operator shall be indicated and his signature notarized,
6 which signature shall be either that of an officer of the company or of some other person who holds
7 a duly recorded power of attorney to execute documents, a copy of which power of attorney shall
8 be filed with the division. If the prospective operator is an individual, the signatory shall be in the
9 same name as the applicant's or a power of attorney to execute documents shall be submitted to the
10 division if the signatory is someone other than the applicant;

11 (b) The surface owner's name shall be indicated and his signature notarized if he approves
12 of the operations and reclamation plan [~~proposal~~], together with any attachments submitted with it.

13 Section 3. Unsigned Reclamation Forms. If the owner of the surface of the severed
14 minerals tract is unwilling or for some other reason has failed to execute Form ED-10, the operator
15 shall file a written petition for mediation, together with the following, at the time the application
16 for permit is filed, in accordance with KRS 353.5901:

17 (1) A copy of the certified mail receipt verifying that the operations and reclamation plan
18 [~~proposal~~], the statement required in KRS 353.5901(4)(b) [~~KRS 353.5901-(2)(b)~~], and the plat
19 were mailed to and received by the surface owner or, if not received, the original or a copy of the
20 unclaimed envelope. A copy of the operations and reclamation plan [~~proposal~~] and the attachments
21 enclosed in the envelope mailed to the surface owner shall also be included.

22 (2) If the surface owner cannot be reached at his last known address of record and certified
23 mail is returned as undeliverable or unknown, the operator shall publish a notice of intended

1 activity, together with a request for information on the whereabouts of the surface owner, which
2 publication shall be made two (2) consecutive times in a local newspaper in the county where the
3 proposed well is located and once in a newspaper of general circulation. A copy of the notice of
4 intended activity and request for surface owner information shall be included when the operator
5 files his application for permit and shall include:

6 (a) The name and address of the operator;

7 (b) A brief description of the intended activity as set out in the operations and reclamation
8 plan [proposal];

9 (c) The surface owner must respond to this notice within fifteen (15) days of the second
10 publication in the newspaper; and

11 (d) A statement of where interested persons may obtain additional information as to the
12 operator's intended activity.

13 Section 4. Mediation of Dispute. (1) The surface owner may file with the division a request
14 for mediation at any time after he has received from the operator the proposed operations and
15 reclamation plan [proposal], but only after the operator has filed his request for mediation and not
16 later than the time set forth in the Notice of Request for Mediation provided by the department and
17 mailed to the surface owner. The surface owner's request to participate in mediation shall include
18 the mediation fee, in accordance with KRS 353.5901(6) [~~KRS 353.5901(2)(b)~~], or a request for
19 waiver of the fee.

20 (2) Contents of a request for fee waiver. The request for waiver of the mediation fee shall
21 set forth:

22 (a) A brief statement of facts underlying the request for a determination that the
23 individual is financially unable to pay the mediation fee required by KRS 353.5901(6);

1 and

2 1. Documentation that the individual is receiving or has been deemed eligible to receive
3 public assistance; or

4 2. An affidavit, subject to penalties for perjury, setting forth the applicant's individual
5 income, the applicant's household income, property owned, outstanding obligations, the number
6 and age of dependents, and a copy of his most recent Kentucky and federal income tax returns.

7 (3) Waiver determination. Within thirty (30) days of filing of the petition, the mediator
8 shall issue a determination accepting or denying the request for fee waiver. If the fee waiver is
9 denied, the applicant shall be informed in writing and the applicant shall be given thirty (30)
10 days from the mailing of the mediator's waiver denial to submit the mediation fee to the
11 department, or the surface owner shall be deemed to have failed to satisfy the statutory
12 requirements applicable to mediation and a report shall be issued pursuant to Section 4(4) of this
13 administrative regulation. The mediator's waiver determination is not subject to appeal. In
14 considering the request for fee waiver, the mediator shall consider the statement and affidavit
15 submitted by the surface owner and consult the Federal Poverty Guidelines in effect at the time the
16 request is mailed. The mediator shall waive the mediation fee for any surface owner whose
17 household income is at or below 100% of the Federal Poverty Guideline. The mediator has the
18 discretion to waive the mediation fee for any surface owner whose household income exceeds
19 100% of the Federal Poverty Guideline if the mediator determines that the surface owner has
20 demonstrated financial inability to pay the fee. It may be presumed that the surface owner has the
21 financial ability to pay the mediation fee if that person is not receiving, or is not eligible to
22 receive, public assistance payments at the time the affidavit is submitted; or owns more than one
23 (1) motor vehicle.

1 (4) [(2)] If the surface owner does not file his mediation fee within the time and in the
2 manner required in the Notice of Request for Mediation, he shall be deemed to have failed to
3 satisfy the statutory requirements applicable to mediation, the mediator shall file a report noting the
4 failure and recommend the acceptance of the operator's operations and reclamation plan [~~proposal~~].

5 (5) [(3)] The mediator shall not settle damage claims or make any determinations regarding
6 them in his report. However, information presented by the operator or surface owner as to costs
7 incurred by either party as a result of the projected drilling and the loss of minerals or surface
8 damage may be utilized by the mediator in recommending the placement of roads, pits or other
9 construction and reclamation activities in a manner which has the least adverse surface impact.

10 (6) [(4)] If the operator withdraws his application for a permit to drill, deepen, or reopen a
11 well after receipt by the division of the surface owner's mediation fee, that fee shall be refunded to
12 the surface owner.

13 Section 5. Construction, Reclamation, and Maintenance. (1) Pre-construction planning shall
14 be performed to design access roads, wellsite, and pits along existing topography to minimize
15 erosion and identify locations for sediment control practices and devices in accordance with the
16 operations and reclamation plan.

17 (2) Construction activities shall incorporate best management practices for erosion and
18 sedimentation control on all disturbed areas. All cuts and fills shall have side slopes that are stable
19 for the soil or fill material utilized. Wellsites shall be constructed on a stable base. Where
20 practicable pits shall be constructed in solid ground on the cut or highwall side of the wellsites, and
21 in accordance with 401 KAR 5:090 Section 9(5)(a).

1 (a) All disturbed areas shall be graded and stabilized so that soil erosion, surface
2 disturbances, and stream sedimentation is minimized utilizing best management practices, in
3 accordance with the approved operations and reclamation plan.

4 (b) Where practicable all topsoil present in the area to be disturbed shall be removed and
5 segregated for redistribution during reclamation.

6 (c) Temporary erosion control measures shall be implemented during construction of the
7 road to minimize sedimentation and erosion until permanent control measures including seeded
8 and mulched road ditches can be established.

9 ~~(3)[(1) The construction of the well site, including roads, pits, tanks, lines and other areas~~
10 ~~disturbed, shall be performed by the operator in accordance with the operations and reclamation~~
11 ~~proposal. All cuts and fills shall have side slopes that are stable for the soil or fill material involved.~~
12 ~~The vertical grades shall be as low as reasonably practicable and compatible with topography.~~

13 (2) If the well produces and the site is kept open for long-term use for well servicing and
14 for oil and gas removal, the operator shall:

15 (a) Maintain access roads in a manner as to allow access by the operator without causing
16 unreasonable settlement of the roadbed or slides of the cut slopes, and provide that maintenance in
17 accordance with the operations and reclamation plan [~~proposal~~];

18 (b) Establish drainage to adequately accept runoff from access roads, the well site and other
19 areas in a manner which prevents unreasonable interference with the surface owner's property,
20 roads, farming operations, and buildings, and establish that drainage in accordance with the
21 operations and reclamation plan [~~proposal~~];

22 (c) Repair access roads, the well site area, and pits damaged by events as floods, landslides,
23 or excessive settlement of the embankment as soon as practicable after the damage has occurred;

1 however, the operator shall not be responsible for damage attributable to another party's use of the
2 access road not relating to the drilling, construction or operation of the well by the operator.

3 Section 6. Site closure. (1) The department shall consider a wellsite closed after:

4 (a) All surface production facilities have been removed;

5 (b) The well has been plugged under direction of the department; and

6 (c) Written notice has been provided by the operator to the division that final reclamation
7 and site closure has been completed and the reclamation work pursuant to the operations and
8 reclamation plan has been approved by the cabinet. [~~the operator shall provide written notice to the~~
9 ~~division when final reclamation and plugging have been completed.~~]

10 (2) The bond required in KRS 353.590(5) shall not be released until a division inspector
11 has made an inspection of the well site one (1) year after the date of the letter of notification from
12 the operator of final reclamation and plugging and has filed a report to the director documenting
13 that the following have occurred:

14 (a) All areas disturbed by the operator have been secured in a manner to prevent runoff,
15 sedimentation, or settlement of the roadway, sliding of cut slopes or any fill material;

16 (b) A diverse and effective permanent vegetative cover has been established; and

17 (c) Any matters relating to settlement, inadequate vegetative cover or erosion have been
18 corrected.

19 Section 7. Transfer of Wells having Existing Reclamation Plans. (1) Prior to transferring a
20 well located on a severed minerals tract and for which an approved operations and reclamation
21 plan [~~proposal~~] is on file with the division, the operator shall:

22 (a) Provide the successor operator a copy of the approved reclamation forms and
23 attachments on file with the division before signing Form ED-13, "Well Transfer";

1 (b) Advise the successor operator of any reclamation responsibility the transferring
2 operator had with regard to the well and related surface disturbance;

3 (c) Secure from the successor operator a letter indicating he has received from the
4 transferring operator a copy of Form ED-10 and that he is willing to accept responsibility for the
5 reclamation of the well site and other surface disturbances related to the operation of the well;

6 (d) Submit to the division the executed Form ED-13, applicable fee, and the letter of the
7 successor operator's agreement to accept responsibility for reclamation in the manner set forth on
8 Form ED-10; and

9 (e) Provide the surface owner of record with a copy of form ED-13 when he submits it to
10 the division.

11 (2) The division shall not transfer the well until the requirements of this section are satisfied
12 and shall advise the transferring and successor operators in writing when the well is transferred.

13 (3) The transferee of a well shall assume all obligations under the terms of the permit and
14 this section upon transfer regardless of whether the transferor commenced the activity and
15 regardless of whether the transferor failed to properly perform the transferor's obligations under
16 the permit and this chapter. The transfer of the permit shall relieve the transferor of any future
17 obligations under the terms of the permit or this chapter, but shall not relieve the transferor of any
18 civil penalties that arose from violations occurring prior to the transfer.

19 Section 8. If a well is to be drilled and completed on federal lands, the director shall accept
20 a copy of a surface use reclamation agreement between the well operator and the federal agency in
21 lieu of the operations and reclamation plan [~~proposal~~]. If the operator elects to submit this
22 agreement, it shall be submitted at the time of filing the application for permit to drill a well.

1 Section 9. (1) If a field inspection indicates there is noncompliance with the approved
2 operations and reclamation plan [~~proposal~~] or the requirements of Section 6 of this administrative
3 regulation, a written notice of violation describing the noncompliance shall be given to the
4 operator, together with a statement of the action required to correct the noncompliance.

5 (2) The written notice of violation shall allow the operator up to forty-five (45) days to
6 correct the violation.

7 (3) An operator may file for an extension of time to correct a violation by submitting a
8 letter to the director describing the need for that extension; if the director concludes that the request
9 is reasonable and that an extension of time will not violate the requirements of this administrative
10 regulation or applicable statutes, he may grant the request for extension of time.

11 (4) The operator's bond may be forfeited to the department's oil and gas well plugging fund,
12 pursuant to KRS 353.590(10) [~~KRS 353.590(7)~~], if he fails to make required corrections.

13 (5) An operator who, after hearing, is determined by the department to be in
14 noncompliance with any section of this administrative regulation, or who fails to abate any
15 noncompliance of the approved operations and reclamation plan, is subject to the penalties
16 described in KRS 353.991.

17 Section 10. Incorporation [~~Material Incorporated~~] by Reference. (1) The following material
18 is incorporated by reference:

19 (a) "Operations and Reclamation Plan", ED-10, April 2015 [~~Form ED-10, "Plan to Prevent~~
20 ~~Erosion of and Sedimentation from a Well Site~~", (February 14, 1997 Edition), Division of Oil and
21 Gas; and

22 (b) Form ED-13, "Well Transfer", (April 16, 1990 Edition), Division of Oil and Gas.

1 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the
2 Division of Oil and Gas [~~These forms may be obtained from, examined, or copied at the Kentucky~~
3 ~~Department for Natural Resources~~], 1025 Capital Center Drive, [~~Suite 201, P.O. Box 2244,~~]
4 Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

805 KAR 1:170 approved for filing.
Pages (1-12)

4/2/15

Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2015 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2015, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 805 KAR 1:170
Contact Person: Michael Mullins, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the content of the operations and reclamation plan and provides necessary forms to complete the requirements of the administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish reclamation requirements for well sites within the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. This administrative regulation provides the necessary detail for an operations and reclamation plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan and requires the owner or operator to complete the provisions of that plan. This administrative regulation assists in the administration of the statutes by providing necessary details for owners and operators to submit an operations and reclamation plan as well as complete reclamation on their well sites.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to require an operations and reclamations plan on non-severed estates. Currently an operations and reclamation plan is only required on estates where the mineral rights have been severed from the surface. The amendment also clarifies the actions and liabilities related to transfer of permits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that an operations and reclamation plan is required on all oil and gas well sites.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. Currently an operations and reclamations plan is only required on severed estates. This amendment extends those provisions to non-severed estates.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. This amendment relates to the authorizing statutes by extending the operations and reclamation plan required by KRS 353.5901 to non-severed estates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 active operators within the Commonwealth. The proposal will also impact the surface and property owners which will be dependent on the number of wells permitted. There are approximately 900 permits issued each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will be required provide an operations and reclamation plan on non-severed estates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will vary depending on whether the entity makes the required map from a topographical map which can be generated at no cost or if the map is professionally produced which would cost approximately \$500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by fulfilling the requirements of the amendments to KRS 353.5901.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to the proposed amendments.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities are required to submit an operation and reclamation plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Admin. Regulation No. 805 KAR 1:170

Contact Person: Michael Mullins, Regulation Coordinator

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas and Division of Water.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.5901.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA