



Mar 06, 2019

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Kentucky makes important changes to oil and gas law

The Kentucky House of Representatives and Senate unanimously passed House Bill 199 into law during the 2019 legislative session creating the [Kentucky Abandoned Storage Tank and Orphan Well Reclamation Fund](#). This new fund changes current permitting, bonding and transfer requirements for oil and gas wells. It expands the existing abandoned storage tank program and reclamation fund to include orphan wells. The concise act, drafted with significant stakeholder input, includes several important provisions. Of interest are the new permitting and bonding requirements and the [Energy and Environment Cabinet's](#) enforcement authority.

Orphan Wells and Abandoned Storage Tank Sites

The Energy and Environment Cabinet will have the same authority to address orphan wells as currently allowed for abandoned storage tank sites. It can also contract with private parties for remediation or reclamation projects for both wells and storage facilities. The law amends the existing statute to provide for forfeiture of equipment or product remaining at either an orphan well or abandoned storage tank facility site. It gives the Cabinet or its agents authority to include the forfeited equipment or product as part of the remediation project. The notice requirements for entry onto land when the owner is unknown are clarified, as is the Cabinet's authority to make immediate entry if the facilities on the land are believed to be causing an imminent threat. Finally, the Cabinet is authorized to promulgate administrative regulations to address the prioritization of wells and abandoned storage tank facilities to be reclaimed.

Bonding and Permitting

The law makes several changes to the bonding and permitting provisions of [KRS Chapter 353](#). The act replaces the bond schedule for shallow wells with a bonding formula of two dollars for every foot

of true vertical well depth, establishes a new tier structure for shallow well blanket bonds and establishes new requirements for shallow bonds and blanket bonds. It also creates a new section to establish eligibility requirements for permit issuance or transfers under Chapter 353 and allows the Cabinet to promulgate administrative regulations relating to compliance with the eligibility requirements under that section.

Transfer Requirements

As to the permitting and transfer requirements, persons under eighteen years of age are precluded from receiving a permit, as are persons who falsify information on their applications, persons who have failed to abate existing violations, and applicants having control persons who have a previous forfeiture or were affiliated with another entity with a previous forfeiture. The law defines control persons broadly to include any persons with authority to commit the financial resources of an entity, with the practical authority to direct the way the well operates, who have a controlling interest in the entity, or who occupy a formal officer or director position. It also includes a presumption that any ineligible person is directing the actions of a child or spouse who is an applicant. The Cabinet has the authority to restore a person's permit eligibility under certain circumstances and to promulgate regulations relating to the compliance review required by this section.

Concerning transfers, the section establishes procedures under which the proposed successor operator may decline to take responsibility for wells with existing violations or missing records. After approval by the [Department for Natural Resources](#), the successor operator assumes the obligations of the Chapter with regard to the transferred wells, relieving the current operator of those responsibilities, and the current operator remains responsible for the wells declined by the successor.

Enforcement Authority

The act includes several provisions which address enforcement. In addition to the existing provisions on notices of non-compliance,

the act establishes procedures for the Energy and Environment Cabinet to issue well closure orders where the operator has not posted the required bond, or the well is in violation in a manner which poses an imminent threat to human health, safety or the environment. The Cabinet has the authority to assess a civil penalty against those operating a well without complying with permitting requirements, with such penalties to be deposited into an oil and gas well plugging fund. Procedurally, the act requires the Cabinet's Office of Administrative hearing for appeals from final orders issued by the Department for Natural Resources to issue, deny, modify or revoke any permit under the [Underground Injection Control Program](#) . It amends KRS 353.710 to allow the Department to bring suit against a person violating various provisions of the Chapter in Franklin Circuit Court, not just in the Circuit Court in the county in which the violation occurs.

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