

CHAPTER 173**(HB 669)**

AN ACT relating to oil and gas, making an appropriation therefor, and declaring an emergency.

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

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

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

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

Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool";
- (10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools;
- (11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts;
- (12) "Abandoned," when used in connection with a well or hole, means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of oil or gas or for the injection or disposal of fluid therein;
- (13) "Workable bed" means:
 - (a) A coal bed actually being operated commercially;
 - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (c) A coal bed which, from outcrop indications or other definite evidence, proves to the satisfaction of the commissioner to be workable, and which, when operated, will require protection if wells are drilled through it;

- (14) "Well" means a borehole:
- (a) Drilled or proposed to be drilled for the purpose of producing gas or oil;
 - (b) Through which gas or oil is being produced; or
 - (c) Drilled or proposed to be drilled for the purpose of injecting any water, gas, or other fluid therein or into which any water, gas, or other fluid is being injected;
- (15) "Shallow well" means any well drilled and completed at a depth of six thousand (6,000) feet or less except, in the case of any well drilled and completed east of longitude line 84 degrees 30'; shallow well means any well drilled and completed at a depth of six thousand (6,000) feet or above the base of the lowest member of the Devonian Brown Shale, whichever is the deeper in depth;
- (16) "Deep well" means any well drilled and completed below the depth of six thousand (6,000) feet or, in case of a well located east of longitude line 84 degree 30', a well drilled and completed at a depth below six thousand (6,000) feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper;
- (17) "Operator" means:
- (a) For a deep well, any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others. In the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as the royalty owner to the extent of the prevailing royalty in the oil and gas in that portion of the pool underlying the tract owned by the owner, and as operator as to the remaining interest in such oil and gas. In the event the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool; and
 - (b) For a shallow well, any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas therefrom, either for himself or herself, or for himself or herself and others. If there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as operator to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by the owner, and as a royalty owner as to the one-eighth (1/8) interest in the oil and gas. If the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as operator as to the pool;
- (18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as defined in subsection (17) of this section;
- (19) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum oil or gas reasonably recoverable in the area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, the area shall be a drilling unit;
- (20) "Underground source of drinking water" means those subsurface waters identified as in regulations promulgated by the department which shall be consistent with the definition of underground source of drinking water in regulations promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42 U.S.C. secs. 300(f) et seq.;
- (21) "Underground injection" means the subsurface emplacement of fluids by well injection but does not include the underground injection of natural gas for purposes of storage;
- (22) "Endangerment of underground sources of drinking water" means underground injection which may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and if the presence of the contaminant may result in the system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons;
- (23) "Class II well" means wells which inject fluids:
- (a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
 - (b) For enhanced recovery of oil or natural gas; and

- (c) For storage of hydrocarbons which are liquid at standard temperature and pressure;
- (24) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;
- (25) "Horizontal well" means a well, the wellbore of which is initially drilled on a vertical or directional plane and which is curved to become horizontal or nearly horizontal, in order to parallel a particular geological formation and which may include multiple horizontal or stacked laterals;
- (26) "Vertical well" means a well, the wellbore of which is drilled on a vertical or directional plane into a formation and is not turned or curved horizontally to allow the wellbore additional access to the oil and gas reserves in the formation;
- (27) "Prevailing royalty" means the royalty rate or percentage that the department or the commission determines is the royalty most commonly applicable with regard to the tract or unit in the issue. The royalty rate set by the department or the commission shall not be less than one-eighth (1/8) or twelve and one-half percent (12.5%);
- (28) "Best management practices" means demonstrated practices intended to control site runoff and pollution of surface water and groundwater to prevent or reduce the pollution of waters of the Commonwealth;
- (29) "Abandoned storage tank facility" means any aboveground storage tank or interconnected grouping of tanks that is no longer being actively used and maintained in conjunction with the production and storage of crude oil or produced water;
- (30) "Spill prevention, control, and countermeasure structures" means containment structures constructed around a storage facility to contain facility discharges;
- (31) "Landowner" means any person who owns real property where an abandoned storage tank facility is currently located;
- (32) "Chemical Abstracts Service" means the division of the American Chemical Society that is the globally recognized authority for information on chemical substances;
- (33) "Chemical abstracts service number" means the unique identification number assigned to a chemical by the Chemical Abstracts Service;
- (34) "Chemical" means any element, chemical compound, or mixture of elements or compounds that has its own specific name or identity, such as a chemical abstracts service number;
- (35) "Chemical disclosure registry" means the chemical registry known as FracFocus developed by the Groundwater Protection Council and the Interstate Oil and Gas Compact Commission. If that registry becomes permanently inoperable, the chemical disclosure registry shall mean another publicly accessible Web site that is designated by the commissioner;
- (36) "Division" means the Kentucky Division of Oil and Gas;
- (37) "Emergency spill or discharge" means an uncontrolled release, spill, or discharge associated with an oil or gas well or production facility that has an immediate adverse impact to public health, safety, or the environment as declared by the secretary of the cabinet;
- (38) "Health professional" means a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the Commonwealth of Kentucky;
- (39) "High-volume horizontal fracturing treatment" means the stimulated treatment of a horizontal well by the pressurized application of more than eighty thousand (80,000) gallons of water, chemical, and proppant, combined for any stage of the treatment or three hundred twenty thousand (320,000) gallons in the aggregate for the treatment used to initiate or propagate fractures in a geological formation for the purpose of enhancing the extraction or production of oil or natural gas;
- (40) "Proppant" means sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed;
- (41) "Total water volume" means the total quantity of water from all sources used in a high-volume hydraulic fracturing treatment;
- (42) "Trade secret" means information concerning the volume of a chemical or relative concentration of chemicals used in a hydraulic fracturing treatment that:

- (a) Is known only to the hydraulic fracturing treatment's owners, employees, former employees, or persons under contractual obligation to hold the information in confidence;
 - (b) Has been perfected and appropriated by the exercise of individual ingenuity which gives the hydraulic fracturing treatment's owner an opportunity to retain or obtain an advantage over competitors who do not know the information; and
 - (c) Is not required to be disclosed or otherwise made available to the public under any federal or state law or administrative regulation;
- (43) "Cabinet" means the Energy and Environment Cabinet;
- (44) "Stratigraphic test well" means an exploratory borehole drilled for the sole purpose of acquiring subsurface geological and structure test data;
- (45) "Notice" means the sending of certified mail to the last known address. The date of delivery shall be the earlier of the date shown on the certified mail return receipt or the date thirty (30) days after the date shown on the postal service proof of mailing. For the purposes of KRS 353.620, 353.630, 353.640, and 353.700, any unknown or nonlocatable owner shall be deemed to have received notice, provided that the person giving the notice has caused to be published, no more than thirty (30) days prior to the submission of an application or order issued pursuant to an application, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, affected or proposed to be affected, is located. The applicant shall provide a copy of the published notification to the director within twenty (20) days of the date of publication. The notice shall:
- (a) State, as applicable, that an application is being filed with the division or that an order has been issued pursuant to an application filed with the division;
 - (b) Describe any tract, or portion thereof, affected or proposed to be affected;
 - (c) In the case of an unknown owner, identify the name of the last known owner;
 - (d) In the case of a nonlocatable owner, identify the owner and the owner's last known address; and
 - (e) State that any party claiming an interest in any tract, or portion thereof, affected or proposed to be affected, shall contact the operator at the published address;
- (46) (a) "Control person" means a person who:
1. Has the ability to commit the financial or real property assets or working resources of an entity to comply with this chapter and the administrative regulations promulgated hereunder with respect to the operations of a well or the manner in which a well is operated;
 2. Has any other relationship that gives that person authority to determine the manner in which a well is operated, plugged, and abandoned. This includes a rebuttable presumption that an ineligible person is directing the actions of his or her spouse or child who files an application;
 3. Is an officer, director, or general partner of an entity; or
 4. Has an ownership interest in an entity equaling or exceeding fifty percent (50%), except that the cabinet may determine that a person has controlling interest in an entity with less than fifty percent (50%) ownership.
- (b) Unless the person is determined to qualify under paragraph (a) of this subsection, "control person" does not include:
1. An independent third-party service company;
 2. A contract operator;
 3. A well tender or pumper;
 4. The owner of a non-operated undivided working interest;
 5. A limited partner;
 6. A unitholder in a limited liability company; or

7. Any other person who by virtue of a joint operating agreement, entity governance agreement, or other contractual relationship does not have the right to control the manner in which a well is operated and plugged and abandoned;
- (47) "Eligible well" means:
- (a) An orphan well; or
 - (b) Any abandoned well that poses an imminent threat to human health, safety, or the environment; and
- (48) "Orphan well" means any oil or gas well, *as defined in subsection (14) of this section*, which has been determined by the cabinet to be improperly abandoned or improperly closed, and that ~~is~~
- ~~(a) 1. Predates the state oil and gas permitting requirements enacted on June 16, 1960; or~~
 - ~~2. Has no known history of permitting or bonding under any state regulatory program; and~~
 - ~~(b) 1. }has no known owner or operator with continuing legal responsibility, {;}~~ or
 - ~~{2. }all owners or operators with continuing legal responsibility for the well are determined to be financially insolvent following a reasonable investigation conducted by the cabinet.~~

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

- (1) (a) There is hereby created the Kentucky Abandoned Storage Tank and Orphan Well Reclamation Program. The purpose of the program is to:
 1. **Remediate and** reclaim abandoned storage tanks;
 2. Properly plug and abandon eligible wells; and
 3. Address imminent threats to human health, safety, or the environment posed by oil and gas facilities located in the Commonwealth.

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

 1. Removing necessary well and tank infrastructure;
 2. Proper plugging and abandonment of eligible wells;
 3. Proper abandonment of tanks posing an imminent threat to human health, safety, or the environment;
 4. Implementation of best management practices at sites associated with eligible wells or abandoned storage tank facilities; or
 5. Removing primary and secondary sources of contamination of the land, air, and water.

(c) Orphan wells and abandoned storage tank facilities determined by the cabinet to be eligible for plugging, removal, reclamation, and clean up funds from the Kentucky abandoned storage tank and orphan well reclamation fund shall be addressed in accordance with this section and KRS 353.561, 353.563, and 353.564.
- (2) The Kentucky abandoned storage tank and orphan well reclamation fund is hereby created as an interest-bearing, restricted, agency account. The fund shall be administered by the cabinet. Interest credited to the account shall be retained in the account. Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes authorized and set forth in this section and KRS 353.561, 353.563, and 353.564.
- (3) The fund established in subsection (2) of this section may utilize and expend funds as authorized by the biennial budget.
- (4) Moneys in the fund shall be for carrying out the purpose provided in subsection (1) of this section, including any administrative costs incurred by the cabinet during the implementation of this section and KRS 353.561, 353.563, and 353.564. The fund may receive moneys from federal and state grants or appropriations, and from any other proceeds received for the purposes of this section and KRS 353.561, 353.563, and 353.564. ***Separate accounts may be established within the fund to segregate moneys received and expended for different programs operated by the Kentucky Abandoned Storage Tank and Orphan Well Reclamation Program.***
- (5) (a) Funds may be expended for costs incurred in the:

1. **Remediation and** reclamation of abandoned storage tank facilities;
 2. Proper plugging, **remediation**, reclamation, and abandonment of eligible wells; or
 3. Proper **remediation**, reclamation, and abandonment of abandoned storage tank facilities posing an imminent threat.
- (b) These funds may be expended in accordance with this section and after the cabinet determines that:
1. The well qualifies as an eligible well as defined in KRS 353.510;
 2. There is no person identified or found with continuing legal responsibility for the abandoned storage tank facility; or
 3. Reclamation or remedial measures are necessary to respond to an imminent threat to human health, safety, or the environment, posed by an abandoned storage tank facility or improperly abandoned well.
- (6) Reclamation measures paid for by the fund shall include the following:
- (a) Removal and disposal of abandoned storage tank facilities;
 - (b) Reclamation of lands affected by abandoned storage tank facilities, including:
 1. Proper removal or abandonment of flow lines;
 2. Removal or treatment of contaminated soil to no more than three (3) feet in depth;
 3. Elimination of all berms, dikes, and other structures utilized as spill prevention, control, and countermeasure structures;
 4. Grading, stabilization, and seeding of the surface where the tank or tank battery was located; and
 5. Implementation of best management practices at sites associated with abandoned storage facilities; and
 - (c) Reclamation of lands affected by eligible wells, including:
 1. Proper removal or abandonment of flow lines;
 2. Removal and disposal of surface production equipment;
 3. Grading, stabilization, and seeding of the surface where the well was located;
 4. Implementation of best management practices at sites associated with eligible wells; and
 5. Removal or treatment of contaminated soil to no more than three (3) feet in depth.
- (7) If during the course of removing and reclaiming an abandoned storage tank facility or plugging and reclaiming an eligible well, the division observes evidence of soil contamination below three (3) feet depth, the division shall consult with the Department for Environmental Protection to determine whether further action is necessary to protect public health and the environment. Nothing contained in this section shall be construed to obligate the fund to provide additional moneys for removal or treatment of contaminated soil other than provided in subsection (6)(b)2. and (c)5. of this section.
- (8) Any person performing reclamation measures pursuant to this section shall comply with applicable local, state, and federal laws and regulations.
- (9) The cabinet shall have the authority to:
- (a) Contract for services provided by and engage in cooperative projects with other government agencies or private parties in the furtherance of any remedial or reclamation project authorized and undertaken pursuant to this section and KRS 353.561, 353.563, and 353.564;
 - (b) Enter into agreements with those government agencies or private parties to compensate those agencies and private parties with funds from the account; and
 - (c) Accept and deposit into *separate accounts within* the fund any federal, state, and other funds for the purposes of *subsection (10) of this section and* KRS 353.561, 353.563, and 353.564.
- (10) ***Moneys received by the Commonwealth from the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, shall be placed into a separate account within the fund to administer and award contracts which are***

committed to and issued for the purposes of Pub. L. No. 117-58 and any federal rules and guidance issued pursuant thereto. Moneys received by the Commonwealth under Pub. L. No. 117-58:

- (a) *May be used for the plugging and abandonment of wells and the remediation and reclamation of associated pipelines, facilities, and infrastructure eligible for funding under this section; and*
 - (b) *Shall be maintained and expended in a manner as provided by any federal rules and guidance issued pursuant to Pub. L. No. 117-58.*
- (11) *Except for the modification allowed for initial grants in subsection (12) of this section, the number of eligible wells in the vendor's scope of work for contracts issued pursuant to subsection (10) and this section for all grant types established under Pub. L. No. 117-58 shall be limited as follows:*
- (a) *One-third (1/3) of the contracts issued in a twelve (12) month period shall be limited to no more than ten (10) wells;*
 - (b) *One-third (1/3) of the contracts issued in a twelve (12) month period shall be limited to no more than twenty-five (25) wells; and*
 - (c) *One-third (1/3) or the remaining contracts issued within a twelve (12) month period shall not have a limit on the number of wells in the scope of work.*
- (12) *The cabinet may adjust the number of wells within a bid package issued pursuant to subsections (10) and (11) of this section as needed in order to comply with any deadlines imposed under Pub. L. No. 117-58 for initial grants, provided that the overall percentages required in subsection (11) of this section are achieved at the end of each twelve (12) month period.*
- (13) *As used in this section, "grant types" means the initial, formula, and performance grant categories that states can use to apply for moneys to clean up orphan wells described in the December 17, 2021, guidance to states issued by the United States Department of the Interior.*

➔Section 3. Whereas the Commonwealth is eligible for federal funding to properly close and clean up orphaned wells and well sites, and because many of these well sites have degrading infrastructure that can harm public health, safety, and the environment, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 8, 2022.