

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Repealer)

5 401 KAR 5:091. Repeal of 401 KAR 5:090.

6 RELATES TO: KRS Chapters 151, 224

7 STATUTORY AUTHORITY: KRS 151.125, 224.10-100, 224.70-110

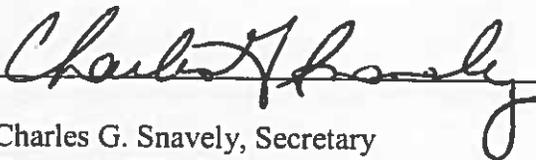
8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 151.125 and 224.10-100 require the
9 cabinet to promulgate administrative regulations pertaining to the issuance of permits and the
10 prevention, abatement, and control of water pollution. The administrative regulation being
11 repealed requires registration and reporting of oil and gas facilities and related fees. There is no
12 federal mandate for the repeal.

13 Section 1. 401 KAR 5:090, Control of water pollution from oil and gas facilities, is hereby
14 repealed.

401 KAR 5:091 Repeal of 401 KAR 5:090 is approved for filing.

10/29/2019

Date



A handwritten signature in cursive script, reading "Charles G. Snavely", is written over a horizontal line.

Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2020 at 6:00 p.m. Eastern Time at 300 Sower Boulevard, Training Room B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 canceled. 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 shall be accepted through January 31, 2020 and shall receive the same consideration as verbal comments. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Carole J. Catalfo
Division of Water, RPPS
300 Sower Boulevard, 3rd Floor
Frankfort, Kentucky 40601
Phone: (502) 782-6914
Fax: (502) 564-4245
Email: water@ky.gov (Subject line: Oil & Gas Repealer)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 5:091

Contact Person:

Carole J. Catalfo

Phone: (502) 782-6914

Email: water@ky.gov (Subject Line: Oil & Gas Repealer)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 5:090 Control of water pollution from oil and gas facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to remove redundancy and conflicts with Kentucky statutes and regulations, and to provide clarity to the regulated community. 401 KAR 5:090 required the registration of oil and gas facilities that might otherwise be exempt from the Kentucky Pollutant Discharge Elimination System (KPDES) program. The KPDES individual discharge permit fees established in KRS 224.10-230 and KRS 224.70-120 in 1990 made the permit fee established in 401 KAR 5:090 September 4, 1986 no longer applicable. For oil and gas facilities that are not subject to the KPDES program, portions of 401 KAR 5:090 have been relocated to, and are more appropriately regulated by, the Kentucky Division of Oil and Gas (DOG) regulations 805 KAR 1:110, 1:170, 1:180, and 1:190, and Division of Waste Management (DWM) regulations contained in 401 KAR Chapters 45, 47, and 48.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Stormwater construction permits for oil and gas facilities are issued under other KPDES regulations (401 KAR Chapter 5) promulgated pursuant to KRS 224.10-100 and 224.16-050. These statutes also authorize permits for produced water discharged to waters of the Commonwealth. 401 KAR 5:090 is unnecessary because the remainder of 401 KAR Chapter 5, DOG regulations 805 KAR 1:110, 1:170, 1:180, and 1:190, and Division of Waste Management (DWM) regulations contained in 401 KAR Chapters 45, 47, and 48, provide appropriate coverage for these facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 401 KAR 5:090 will eliminate the regulatory fee conflict with KRS 224 and redundancy with other regulations. Applicable portions of 401 KAR 5:090 have been relocated to, and are more appropriately regulated by, the DOG regulations 805 KAR 1:110, 1:170, 1:180, and 1:190, and Division of Waste Management (DWM) regulations contained in 401 KAR Chapters 45, 47, and 48.

(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 is not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will affect businesses involved in oil and gas exploration, however, the exact number is unknown. There are approximately 1,060 active oil and gas operators in the Commonwealth and approximately 10,000 active oil and gas registrations; however, a business may have multiple registrations. Approximately 250 oil and gas registrations and transport-off-site permits are issued each year. The number of entities involved in oil and gas exploration as individuals, organizations, or state and local government is negligible.

(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: Businesses involved in oil and gas exploration may be required to obtain stormwater construction permits depending on the size and scope of their activities, and will need to review the amended DOG regulations in 801 KAR Chapter 1 for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no permit fee for oil and gas businesses that qualify for a general stormwater construction permit. For those that are required to obtain an individual stormwater permit, the fee for a five-year permit pursuant to KRS 224.70-120 is \$2,100. Approximately 10% (25) of each year's stormwater permits are expected to be individual permits because of disturbance size or stream considerations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repeal eliminates fees for construction of holding pits, construction of disposal wells, and operation of disposal wells which were made obsolete by KRS 224.10-230 and KRS 224.70-120 in 1990. Businesses will be lawfully permitted to discharge as established in other regulations of 401 KAR Chapter 5 and will benefit from consistency between Division of Water, Division of Oil and Gas, and Division of Waste Management regulations.

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

(a) Initially: This administrative regulation will have no impact on costs to the Division

of Water.

(b) On a continuing basis: This administrative regulation will have no impact on costs to the Division of Water.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will have no impact on funding for implementation or enforcement.

(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: An increase in fees will not be necessary for the implementation of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied to this repealer administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

401 KAR 5:091

Contact Person:

Carole J. Catalfo

Phone: (502) 782-6914

Email: water@ky.gov (Subject Line: Oil & Gas Repealer)

(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? Local government will not be affected by this repeal. The Division of Water, Division of Waste Management, and Division of Oil and Gas are the divisions of state government affected by this repeal.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, KRS 224.16-050, and 33 U.S.C. 1251-1387.

(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 administrative regulation will not generate any revenue.

(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 administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs will be incurred from this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Division of Water does not anticipate any fiscal impact because this administrative regulation is a repealer.

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 5:091

Contact Person:

Carole J. Catalfo

Phone: (502) 782-6914

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1. Federal statute or regulation constituting the federal mandate. The federal regulations constituting the federal mandate are .

2. State compliance standards. The state compliance standards are established in KRS 151.125, 224.10-100, 224.16-050, and 224.70-110.

3. Minimum or uniform standards contained in the federal mandate 33 U.S.C. 1251-1387.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter or additional or different responsibilities or requirements.