FILED WITH LRC
TIME: 4 pm
OCT 14 2019
Emily B Caudill
REGULATIONS COMPILER

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

(Amended After Comments)

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

RELATES TO: KRS 349.035, 353.500, 353.520, 353.540, 353.550, 353.560

STATUTORY AUTHORITY: KRS 349.115 [~~13A.100~~], 353.540, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 and 353.540 authorizes the Department for Natural Resources to promulgate administrative regulations to implement the Commonwealth's oil, gas, and coalbed methane programs. This administrative regulation establishes requirements [~~Provides~~] for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

Section 1. Purpose. This administrative regulation is [~~Rules and administrative regulations set out herein are~~] designed for the protection of gas storage reservoirs which are natural resources of the state, and no person, firm, or corporation shall cause physical damage to, or create a hazardous condition threatening the existence of, [~~such~~] a reservoir in any manner as to make any [~~such~~] reservoir less susceptible for use for gas storage. Any well penetrating, drilled to a geologic stratum overlying, or [~~and~~] drilled in the vicinity of an underground gas storage reservoir shall be maintained at all times in [~~such~~] a manner as will both:

(1) Exclude the encroachment of oil, gas or water into such reservoir; and

(2) Protect such reservoir from a blowout or waste of gas during the drilling of and after completion or [~~and/or~~] plugging of the [~~such~~] well. In addition, this administrative regulation has as its purpose the equitable adjustment of correlative rights of gas storage owners and oil and gas operators and it shall be liberally construed to give effect to such public policy.

Section 2. [~~Definitions. (1) "Gas storage reservoirs" are special geologic and geometric elements of underground strata which are or can be so arranged and situated as to be recognized as useful for the retention, injection, storage and recovery of gas therefrom on a commercial service level.~~

~~(2) "Underground gas storage" is the utilization of subsurface strata and associated facilities for storing and withdrawing gas held in place for the primary purposes of conservation, fuller utilization of pipeline facilities, and more effective and beneficial service of gas to the public.~~

~~(3) "Gas storage operator" is any corporation, partnership, or individual who is engaged in the work of preparing to inject, or who injects gas into, or who stores gas in, or removes gas from, a gas storage reservoir, and who owns the right to do so, including but not limited to those engaged in transporting and delivering such gas in public service.~~

~~(4) "Well operator" is any person who proposes to or does locate, drill, operate or abandon any well.~~

~~(5) "Well" is any borehole drilled or proposed to be drilled, deepened or reopened for which a permit is required by KRS 353.570(1).~~

~~Section 3.~~] Establishment of a Gas Storage Reservoir. (1) Before an [~~any~~] area may be declared to contain one (1) or more gas storage reservoirs for the purpose of this administrative regulation the gas storage operator shall file with the Director of Oil and Gas for [~~Conservation as to~~] each [~~such~~] reservoir, a:

(a) Certificate of convenience, issued by the Federal Power Commission or its successor, if [~~such is~~] issued;[~~,a~~]

(b) Certificate of convenience issued by the Kentucky Public Service Commission or its successor, if [~~such is~~] issued; or [~~, or a~~]

(c) Declaration of intent, found by the department to be bona fide, prepared by the gas storage operator to develop a gas storage facility.

(2)(a) The [~~above cited~~] filing, established in subsection (1) of this section, shall be accompanied by a map, prepared on the scale of one (1) inch equals 2,000 feet and using the appropriate seven and one-half (7 1/2) minute topographic map as the base.[~~, which~~]

(b) The map shall outline in detail the properties on which storage rights have been or are being obtained, whether by purchase or condemnation, and an outline of the storage reservoir protection zone as suggested by the storage operator.

(c) This protection zone shall not be [~~no~~] wider than 2,000 feet from the nearest property on which gas storage rights have been or are being obtained. [~~and~~] The width shall be subject to the approval of the department based on the characteristics of the reservoir and the maximum anticipated storage pressure.

(3)[~~(2)~~] The required map shall be refiled at any time that storage rights on additional acreage are acquired or at any time that acreage on which storage rights have been acquired is eliminated.

(4)[~~(3)~~] [~~No~~] Gas shall not be moved and stored until the above cited filing is made with the director. This shall [~~does~~] not include moved and stored gas that [~~which~~] is to be used to determine whether or not underground gas storage is feasible.

(5)[~~(4)~~] Any operator of an existing gas storage reservoir shall file the above cited certificate or declaration and map with the director within sixty (60) days of the date that this administrative regulation becomes effective.

Section 4. Application for Permit to Drill, Deepen or Reopen a Well on Property Where Gas Storage Rights are Acquired. (1) Before drilling, deepening or reopening a well on a [~~any~~] property where gas storage rights have been acquired the well operator shall, at the time of filing with the department, also forward to the gas storage operator by registered or certified mail, or by personal service a copy of the application and plat.

(2) On a [~~any~~] property where there is an outstanding oil and gas lease or on a [~~any~~] property on which producing wells are located, it shall be the responsibility of the gas storage operator to notify the well operator at the time storage rights are acquired of the [~~such~~] acquisition and that a copy of all future applications to drill, deepen, or reopen wells by the well operator shall be furnished to the gas storage operator.

Section 5. Application for Permit to Drill, Deepen, or Reopen a Well on Property Where Gas Storage Rights are Not Acquired but which Lies Within the Storage Reservoir Protection Zone. When an [~~any~~] application for permit to drill, deepen, or reopen a well is received by the department where the location of the proposed well will fall within the storage reservoir protection zone, the department shall notify the well operator and the gas storage operator of the receipt of the application by first class mail, postage prepaid.

Section 6. Objection and Hearing. (1) Applications to drill, deepen, or reopen a well on a property on which gas storage rights have been or are being acquired or upon any property that lies within the storage reservoir protection zone shall be held for five (5) days after receipt.

1 (2) (a) During the time established in subsection (1) of this section the gas storage operator
2 may file with the division specific objections to the proposed well. If objections are filed, the gas
3 storage operator shall notify the well operator by registered certified mail or by personal service.
4 (b) The department, **in accordance with KRS 353.700,** shall set a time and place for the
5 hearing. The hearing time shall be no more than ten (10) days after the end of the five (5) day period.
6 (c) At the hearing, the division, well operator, and the gas storage operator shall consider the
7 objections and agree to the drilling proposal as submitted or agree to changes in the drilling proposal
8 that meets the approval of the division. Any agreed upon amendments to the drilling proposal shall
9 be included on an amended drilling application and filed with the division.
10 (d) The division, upon receipt of the amended application, shall issue to the well operator a
11 drilling permit approving the drilling of the well.
12 (e) If the gas storage operator and the well operator are unable to agree at the hearing, the
13 division shall issue to the well operator a permit to drill the well either as originally proposed or with
14 the amendments to the proposal as the division determines appropriate to protect the underground
15 gas storage reservoir and prevent the loss of gas without unnecessarily restricting drilling operations.
16 [~~Upon receipt of an application to drill, deepen, or reopen a well on any property on which gas~~
17 ~~storage rights have been or are being acquired or upon any property which lies within the storage~~
18 ~~reservoir protection zone, the department shall hold the application for five (5) days. This will enable~~
19 ~~the gas storage operator to file with the department specific objections to the proposed well; and if~~
20 ~~the objections are so filed, the gas storage operator shall, at the same time, serve the same upon the~~
21 ~~well operator by registered or certified mail, or by personal service and the department shall fix a~~
22 ~~time and a place for a hearing, not more than ten (10) days after the end of the five (5) day period, at~~
23 ~~which hearing the objections shall be considered. At the hearing, the well operator and the gas storage~~

~~operator or such of those as are present or represented, shall consider the objections and either agree upon the drilling of the well as proposed or make such change in the drilling program as to satisfy all objections and meet the approval of the department. All changes agreed upon in the drilling of such well shall be set out on an amended application for permit to drill by the well operator and filed with the department within a reasonable period of time after the hearing. The department, upon receipt of the amended application, shall issue to the well operator a drilling permit approving the drilling of such well. If the gas storage operator and the well operator are unable to agree at the hearing, the department shall, in view of the purpose and intent of KRS Chapter 353, issue to the well operator a permit to drill such well either as originally proposed or with such added or corrective program as the department deems appropriate to protect the underground gas storage reservoir and prevent the loss of gas therefrom without unnecessarily restricting drilling operations.~~]

(3)[~~(2)~~] If the gas storage operator and the well operator cannot agree on the proposal [~~program~~] under which the well is to be drilled, completed, and plugged, then the department shall in its order specify what costs, if any, in excess of costs normally expended in the drilling, completion, and plugging of the well shall be borne by the gas storage operator and shall specify when and in what manner payment for such costs shall be made.

(4)(a)[~~(3)~~] The gas storage operator may waive objections by letter, telegram, or telephone, provided the [~~such~~] telephone notice of waiver is followed by a written waiver, to the division [~~department~~] on:

1. Any one (1) well;[~~,~~]

2. Group of wells;[~~,~~]

3. All wells to be drilled by a well operator; or[~~,~~]

4. All wells to be drilled in a specific area or on a specific lease.

(b) If the [~~such~~] waiver or waivers are filed with the division [~~department~~], and the division [~~department~~] having determined that the public interest is being served, then the division [~~department~~] shall issue the permit [~~without delay~~].

Section 7. Notice to Well Operator. The gas storage operator shall give [~~to~~] the well operator a notice of intention to drill, deepen, or reopen a well in the manner provided for in Section 4 of this administrative regulation. Notice shall be required only to the well operator in possession at the time rights of storage are acquired or a [~~his~~] successor in interest if the latter notifies the gas storage operator in writing of the [~~his~~] acquisition. The well operator shall have the same rights and obligations as [~~does~~] the gas storage operator with respect to objections and hearing as detailed in Section 6 of this administrative regulation.

Section 8. Notice of Intention to Plug Wells.

(1) (a) Prior to plugging a well, a well operator shall notify the gas storage operator and the division of the intention to properly plug and abandon the well if the well is:

1. Drilled through or penetrates an underground gas storage reservoir; or

2. Drilled through or penetrates the same stratigraphic horizon as the gas storage reservoir in the storage reservoir protection zone.

(b) The notice shall be given in time for the representatives of the gas storage operator and the division to have the opportunity to be present at the plugging and filling of the well. If representatives do not appear, the well operator may proceed, at the time fixed in the notice, to plug and fill the well.

[~~Prior to the abandonment of a well drilled through or which penetrates an underground gas storage reservoir, or which is drilled through or which penetrates the same stratigraphic horizon as the gas storage reservoir in the storage reservoir protection zone, the well operator shall notify the~~

~~gas storage operator and the department of their intention to plug and abandon the well. The notice shall be timely and reasonable in order that representatives of the gas storage operator and the department will have the opportunity to be present at the plugging and filling of the well. Whether or not such representatives appear, the well operator may proceed, at the time fixed in his notice, to plug and fill the well.~~]

(2)(a) Upon receipt of notice of intention to properly plug and abandon the gas well, the gas storage operator may, and after determining from the well operator the physical condition of the well, elect to only properly plug and abandon the well or bear the entire cost of proper plugging and abandonment.

(b) If the gas storage operator elects to properly plug and abandon the well or bear the entire cost of proper plugging and abandonment, the gas storage operator shall provide notice in writing to the gas well operator and the division.

(c) Upon receipt of the notice from the gas storage operator, the gas well operator shall advise in writing both the gas storage operator and the division of the condition of the well, of any equipment or pipe that may be in the well and the existence and type of any equipment or materials that have been lost in the hole.

(d) Upon receipt by the division of the notice required of the gas storage operator in paragraph (a) of this subsection and the advice required of the well operator in paragraph (c) of this subsection, the division shall cause the well operator's bond to be released and the well shall be placed under the bond of the gas storage operator.

[~~Upon receipt of notice of intention to plug, the gas storage operator may, at his option, and after determining from the well operator the physical condition of the well, elect to plug the well or bear the entire cost of plugging. The option may be exercised only for the purpose of plugging the~~

~~well. If the option is exercised, the gas storage operator shall notify in writing both the well operator and the department of his election. The well operator shall then advise in writing both the gas storage operator and the department the condition of the well, any equipment or pipe that may be in the well and the existence and type of any equipment or materials that have been lost in the hole. Upon receipt by the department of the notice required of the gas storage operator and the advice required of the well operator, the department shall cause the well operator's bond to be released and the well shall be placed under the bond of the gas storage operator.~~]

(3) When the plugging and filling have been completed by either the gas well operator or the gas storage operator, an affidavit setting forth the time and manner in which the well was plugged shall be made by the operator [~~two (2) experienced men who participated in the work~~]. The affidavit shall be made on the Affidavit to Time and Manner of Plugging and Filling Well, Form OG-38, incorporated by reference in 805 KAR 1:060 [~~forms furnished by the department~~]. One (1) copy of the affidavit shall be retained by the person that caused the well to be properly plugged and abandoned, one (1) mailed to the gas storage operator or the well operator and one (1) to the department.

Section 9. Drilling Against High Reservoir Pressures. Whenever possible, the drilling into or through storage reservoirs shall [~~will~~] be conducted when the reservoir pressure is equal to or less than the original formation pressure and the [~~such~~] original formation pressure shall be provided by the gas storage operator.

Section 10. Nothing in this administrative regulation shall be construed to prohibit a well operator or a gas storage operator from drilling a well that they [~~he~~] would otherwise have the right to drill.

805 KAR 1:080 approved for filing.
Pages (1-9)

10/14/2019

Date

Charles G. Snavely, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 805 KAR 1:080
Contact Person: Michael Mullins

Contact number: (502) 782-6720
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.540 and KRS 349.115 authorize the division to promulgate administrative regulations in order to implement the oil and gas programs within the Commonwealth. This administrative regulation conforms to the authorizing statutes by establishing criteria for wells drilled through or near a gas storage reservoir.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing requirements for wells drilled through gas storage reservoirs.

(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 will delete the definitions in the administrative regulation and incorporates information related to coal bed methane wells drilled through gas storage reservoirs into this administrative regulation. This information was previously in 805 KAR 9:050. The amendment made in response to comment simply inserts the statutory citation where the authorizing language can be found related to setting the time and place for a hearing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to drilling wells through gas storage reservoirs. The amendment is necessary to clarify that the department will set a time and place for hearings if objections are filed on permits to drill, deepen, or reopen a well on a property on which gas storage rights have been or are being acquired or upon any property that lies within the storage reservoir protection zone.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates gas storage reservoir information as authorized by KRS 349.115 and 353.540 into this administrative regulation. The amendment made in response to comment simply clarifies the department's statutory authority to set the time and place for a hearing.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to wells drilled through gas storage reservoirs. The amendment made in response to comment simply clarifies the department's statutory authority to set the time and place for a hearing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth.

(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 regulated entities identified in question (3) will meet the same requirements related to wells drilled through gas storage reservoirs. However, the information related to wells drilled through gas storage reservoirs for coalbed methane drilling will now be in this administrative regulation instead of 805 KAR 9:050. The entities in questions (3) will not have any new requirements related to the amendment made in response to comment. The amendment simply inserts a reference that clarifies the Department's statutory authority to set the time and place for hearings for objections made pursuant to Section 6 of this administrative regaltion.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs related to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to wells drilled through gas storage reservoirs in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

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

(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. No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)
No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

Administrative Regulation No.: 805 KAR 1:080 Contact number: (502) 782-6720
Contact Person: Michael Mullins Email: michael.mullins@ky.gov

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? This administrative regulation applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.115, 353.540, and 353.670.

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 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? The proposed administrative regulation will not generate revenue in the first year.

   (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? The proposed administrative regulation will not generate revenue in subsequent years.

   (c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

   (d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

| | |
|---|---|
| Revenues (+/-): | There is no known effect on current revenues. |
| Expenditures (+/-): | There is no known effect on current expenditures. |
| Other Explanation: | There is no further explanation. |