

349.030 Establishment of rules and procedures for mining through coalbed methane well -- Coalbed Methane Well Review Board to hold hearings and issue orders and mine-through certificates -- Determination of compensation for all parties interested in coalbed methane wells -- Appeal of review board's decisions to Circuit Court -- Escrow of funds.

- (1) If a coalbed methane well is permitted and drilled within the boundaries of any coal mine for which a permit has been issued or an application for a mine permit or a mine permit modification or amendment has been filed but not issued pursuant to KRS Chapter 350, the mine licensee shall have the right to mine through that coalbed methane well and the associated drilling unit in accordance with the provisions of this subsection.
 - (a) At least one hundred twenty (120) days prior to mining through a coalbed methane well and associated drilling unit, the mine licensee shall notify the review board and operator of its intention to mine through the property. The notice shall be made on a form prescribed by the review board, and shall include a plat showing the location of the drilling unit, the coalbed methane well and associated surface equipment, facilities, infrastructure, and improvements, and the geographic extent of the mining operations to be conducted within the drilling unit. The mine licensee shall also submit an estimated schedule for commencing and completing mining operations within the drilling unit. After a hearing the review board shall promptly issue a written determination on whether the continued operation of the coalbed methane well will impede, interfere with, or present a possible safety hazard to the mine licensee's planned mining operations. If the review board determines that the coalbed methane well will impede, interfere with, or present a safety hazard to the planned mining operations, concurrently an order shall be issued to the operators, with a copy to the mine licensee, directing the temporary or permanent plugging of the well at the operator's cost and such other action as may be appropriate in the circumstances. Following the issuance of the order, the review board shall promptly issue a mine-through certificate to the mine licensee, with a copy to the operator, authorizing the mine licensee to mine-through the coalbed methane well and associated drilling unit.
 - (b) The mine licensee and all other coal interest holders having interests in the coalbed within the drilling unit shall have no duty or obligation to compensate or pay the operator or other interested coalbed methane parties for any causes of action, claims, or damages arising from the suspension or loss of coalbed methane production or the plugging and abandonment of a coalbed methane well and the removal or relocation of any associated facilities, infrastructure, and improvements due to mining through the coalbed methane well and associated drilling unit pursuant to this subsection.
- (2) If a mine licensee files an application for a coal mine permit or seeks to modify or amend an existing coal mine permit so as to include a geographical area containing one (1) or more existing coalbed methane wells or any well sites for which drilling

permits have been issued or are pending, the mine licensee shall have the right to mine through those coalbed methane wells or into or through a coalbed methane well and the associated drilling units and any well sites for which permits to drill have been issued or applications for permits to drill have been filed but not issued in accordance with the provisions of this subsection.

- (a) At least one hundred eighty (180) days prior to mining into or through one (1) or more drilling units or permitted well sites operated by a common operator, the mine licensee shall notify the review board and the operator of its intention to mine into or through the property. The notice shall be made on a form prescribed by the review board and shall include a plat showing the location of the drilling unit, the coalbed methane well and associated surface equipment, facilities, infrastructure, and improvements, and the geographic extent of the mining operations to be conducted within the drilling unit. The mine licensee shall also submit an estimated schedule for commencing and completing mining operations within the drilling unit.
- (b) Within thirty (30) days after receiving the mine licensee's notice pursuant to paragraph (a) of this subsection, the mine licensee and operator shall enter into a confidentiality agreement on a form prescribed by the review board and the operator shall provide, to the extent available, copies of all data and information necessary and appropriate to enable the mine licensee to determine the current value of each drilling unit, well site, and any associated assets described in the mine licensee's notice in accordance with the criteria set forth in paragraph (e) of this subsection. The information shall be in a form prescribed by the review board and shall include, among other things, data, reports, and information relating to current coalbed methane reserve calculations, well completions, historic production and sales results, capital and operating costs, all actual land, legal permitting, survey, title, and any other costs and expenses directly relating to the acquisition, permitting, development, and operation of each drilling unit and well site, and estimated well plugging and abandonment costs of any existing coalbed methane wells. In addition, the operator shall provide the review board and mine licensee with copies of all agreements and leases, payment division orders and any pooling agreements or pooling orders for each drilling unit and well site, together with a schedule setting forth the name, address, and working interest and net revenue percentages, royalties and overriding royalties, and all other interests and rights of all other interested coalbed methane parties. If the information is not timely filed or is incomplete, the mine licensee may seek an order from the review board directing the operator to comply with the provisions of this subsection.
- (c) Within thirty (30) days after receiving the information described in paragraph (b) of this subsection, the mine licensee and operator shall meet and confer at a mutually agreed upon date, time, and place for the purpose of attempting to conclude a mutually acceptable agreement as to the compensation due to the operator for any damage, impairment, or loss to each drilling unit, well site, and any associated assets described in the information provided by the

operator resulting from the mine licensee's planned mine-through operations. Any compensation agreement between the mine licensee and operator for each drilling unit or well site shall be approved and executed by all other interested coalbed methane parties. The mine licensee and operator shall jointly notify the review board that a compensation agreement has been entered into between the parties and request that the review board issue a mine-through certificate for each drilling unit and well site described in the notice. The notice shall include any terms and conditions set forth in the compensation agreement that the parties have agreed to incorporate in the applicable mine-through certificates. Upon receipt of the executed compensation agreement, the review board shall promptly issue the requested mine-through certificates to the mine licensee, with copies to the operator and all other interested coalbed methane parties. If the parties are unable to reach an agreement, within ten (10) days following the expiration of the thirty (30) day meet and confer period, either party may request a hearing before the review board for the purpose of determining the compensation due the operator and any terms and conditions to be imposed upon the mine licensee's proposed mining operations. Copies of the hearing request shall be sent to all other interested coalbed methane parties.

- (d) Within fifteen (15) days of receiving the hearing request, the review board shall schedule a hearing to take place within sixty (60) days and shall notify the mine licensee, the operator and all other interested coalbed methane parties of the date, time, and location of the hearing. At its election, the review board may engage a qualified petroleum engineer for the purpose of conducting an independent evaluation of the compensation to be paid to the operator and all other interested coalbed methane parties in accordance with paragraph (e) of this subsection. The mine licensee and the operator shall each pay one-half (1/2) of the costs and expenses for the petroleum engineer retained by the review board.
- (e) The review board shall determine the value of each drilling unit, well site, and all associated assets before and after the mine licensee's planned mine-through operations. In determining the amount of compensation due the operator and all other interested coalbed methane parties, the review board must consider all relevant evidence and information submitted and the review board shall base its decision solely upon the following criteria and procedures:
 1. Except as otherwise expressly provided in this subsection, all coalbed methane reserve estimates and the valuation of reserves and other assets damaged, impaired, or lost due to the planned mining operations shall be consistent with standard oil and gas industry accounting, engineering, and reserve practices and shall be performed pursuant to the then-current applicable laws, regulations, policies, and guidelines for determining gas reserves for public reporting companies in the United States.
 2. At the hearing, the mine licensee and operator, on behalf of itself and all other interested coalbed methane parties, shall appear and submit

evidence and testimony as to the value of the subject drilling units, well sites, and any associated assets before and after the mine licensee's planned mining operations. The review board shall only consider coalbed methane reserve estimates or valuation determinations made in conformity with subparagraph 1. of this paragraph by a professional petroleum engineer with experience in evaluating coalbed methane reserves and operations. All reserve estimates and any valuation analysis prepared by the mine licensee and operator for use in the review board's hearing shall be effective thirty (30) days prior to the date of the hearing. The reserve estimates and valuation analysis shall be exchanged between the mine licensee and operator and copies of the information shall be provided to the review board and all other interested coalbed methane parties no less than twenty-one (21) days prior to the hearing date. Any coalbed methane reserve estimates or valuation analysis prepared at the review board's request shall be set forth in a written report. Copies of the report prepared for the review board shall be provided to the mine licensee, the operator, and all other interested coalbed methane parties no less than ten (10) days prior to the review board's hearing date.

3. All estimates of remaining recoverable coalbed methane reserves immediately before and immediately after the planned mining operations shall consist of proved developed producing or proved developed nonproducing reserves as determined pursuant to this subsection. A drilling unit shall have proved developed producing reserves if the unit has an operating coalbed methane well, which is completed in one (1) or more target coal seams and is producing commercial quantities of coalbed methane. The drilling units total proved developed producing reserves before and after the planned mining operations shall be calculated based on the completed coal seams within the unit well. A drilling unit shall have proved developed nonproducing reserves if the unit has a coalbed methane well which is completed in one (1) or more target coal seams and is fully operational and all associated infrastructure such as power, gas gathering, and water management systems required to produce and sell coalbed methane in commercial quantities has been constructed, but the well is not producing coalbed methane in commercial quantities because it either is in the dewatering stage or is not operating due to factors beyond the operator's control. Whether a drilling unit contains proved developed producing reserves or proved developed nonproducing reserves shall be determined based on the status of the coalbed methane well and associated infrastructure sixty (60) days prior to the review board's hearing date.
4. The net present value of proved developed producing reserves projected immediately before and immediately after the planned mining operations shall be calculated using a discount rate of twelve percent (12%). The net present value of proved developed nonproducing reserves projected immediately before and immediately after the planned mining operations

shall be calculated using a discount rate of twenty percent (20%). The valuation analysis shall also project the net present value of all revenues received, if any, by the operator during the period in which the planned mining operations are to be conducted.

5. In determining the compensation due the operator and all other interested coalbed methane parties for delayed or lost production, if the total projected production of the coalbed methane well is reduced so as not to yield a commercially reasonable return on investment to the operator, but the well is still able to produce coalbed methane in commercial quantities, the projected difference in the net present value of the recoverable reserves before and after mining shall be included as part of the compensation due the operator and all other interested coalbed methane parties.
6. In determining the value of the coalbed methane reserves impaired or lost due to the planned mining operations, except as expressly provided herein, no consideration shall be given to undeveloped coalbed methane resources in coal seams which have not been completed in the subject coalbed methane well or which are in coal seams below the total depth of the well bore. If, however, a coal seam in the same field is producing coalbed methane but the coal seam is not completed in the subject coalbed methane well, the operator may submit evidence to the review board for its consideration as to the potential net present value of the resources within the uncompleted seam, but in no event shall the net present value of those resources be discounted at less than thirty percent (30%).
7. Except as otherwise provided herein, in determining the value of coalbed methane for purposes of this subsection, the gas price shall be the last published price in the gas market closest to the drilling unit sixty (60) days prior to the review board's hearing date. If the coalbed methane is sold pursuant to a gas sales agreement or marketing contract in which the gas price is determined based on a published price, subject to any contractual adjustment, in the gas market other than the market closest to the drilling unit, the gas price shall be determined based on the last published price in a gas market referred to in the gas sales agreement or marketing contract, subject to any contractual adjustment set forth therein, sixty (60) days prior to the review board's hearing date. If the coalbed methane is sold pursuant to an arms-length firm or fixed price gas sales agreement or marketing contract, the actual sales price received by operator for gas sold sixty (60) days prior to the review board's hearing date shall be used as the gas price in the coalbed methane valuation.
8. All capital, operating, and production costs used in the net present value determinations made pursuant to this subsection shall be based on the operator's then current reasonable and verifiable actual costs and

expenses. Copies of all relevant and available cost information shall be provided by the operator to the review board and mine licensee as provided in paragraph (b) of this subsection. If actual cost information is not otherwise available, all calculations shall be made using reasonable and customary costs for comparable coalbed methane operations in the Commonwealth and in the surrounding states.

9. If the planned mining operations will mine through a coalbed methane well or require the removal, relocation, or suspension of operation of other facilities, infrastructure, or improvements in a drilling unit, the operator and any other interested coalbed methane parties shall be reimbursed for all reasonable actual and direct costs, damages, and expenses to be incurred due to these mining operations; provided, however, that in no event shall any replacement costs and expenses exceed the operator's or any other interested coalbed methane parties' actual costs and expenses for the affected well, facilities, infrastructure, and improvements, as the case may be. The operator and any other interested coalbed methane parties shall not be reimbursed for any general, administrative, or overhead costs and expenses or any other costs and expenses not otherwise allocated to the costs of the subject drilling unit, coalbed methane well and the associated facilities, infrastructure, and improvements. Any amounts due the operator and any other interested coalbed methane parties shall be reduced by the projected then-current market value of such equipment, facilities, and improvements to the extent that it can be salvaged and sold or used in other operations.
 10. If, prior to drilling a coalbed methane well, the mine licensee submits a plan to mine into or through any part of the associated drilling unit or well site for which a drilling permit has been issued or is pending, the operator shall not proceed with drilling a coalbed methane well pending a final decision by the review board with respect to the mine licensee's request for a mine-through certificate. When a mine-through certificate is issued to the mine licensee, the operator and all other interested coalbed methane parties shall be reimbursed for all reasonable costs and verifiable actual land, legal, permitting, surveying, and technical costs and expenses incurred to acquire or lease and maintain the property and obtain any permits, approvals, and other agreements required to drill the coalbed methane well. The operator and all other interested coalbed methane parties shall not be reimbursed for any general, administrative, or overhead costs and expenses or any other costs and expenses not otherwise allocated to the costs to acquire or lease the subject property or permit the coalbed methane well.
- (f) At a hearing, the review board shall take testimony and evidence from the mine licensee and operator, on behalf of itself and all other interested coalbed methane parties consistent with the provisions in this subsection. Within fifteen (15) days following the hearing, the review board shall issue a written

decision to the mine licensee and operator determining the compensation due the operator and each of the other interested coalbed methane parties in the amount of the difference between the value of each drilling unit, well site, and any associated assets before and after the mine licensee's planned mining operations. If the review board determines that the mine licensee's proposed mining operations will result in a loss or taking of all of either the coalbed methane reserves in the coal seam to be mined and all coalbed methane reserves in completed coal seams in the coalbed methane well below the mined coal seam as provided in paragraph (e)5. of this subsection or the entire drilling unit, the operator and other interested coalbed methane parties shall be awarded the full value of the property and assets prior to the proposed mining operations as determined by the review board. The review board's decision shall list the compensation amounts to be paid to the operator and each of the other interested coalbed methane parties for each drilling unit, well site, and any associated assets. The decision shall also set forth any duties or obligations to be performed by the parties, such as the temporary or permanent plugging of any well or the relocation or removal of any surface facilities, to enable the mine licensee to proceed immediately with the planned mining operations.

- (g) Within fifteen (15) days of receiving the review board's decision, the mine licensee shall notify the review board and the operator and all other interested coalbed methane parties of its decision to:
 - 1. Accept the review board's decision with respect to one (1) or more of the drilling units, well sites, and associated assets and deposit the compensation awarded to the operator and each of the other interested coalbed methane parties for the property;
 - 2. Appeal all or part of the review board's decision as provided in paragraph (j) of this subsection; or
 - 3. Withdraw notice of intent to mine into any of the subject coalbed methane property and assets. If the mine licensee elects to withdraw notice of intent to mine into or through all of the drilling units, well sites, and any associated assets which were the subject of the review board hearing, upon receiving a statement of costs from the operator, the mine licensee shall promptly reimburse the operator for all reasonable out-of-pocket engineering and legal costs and expenses incurred to prepare for and participate in the review board hearing and shall have no further obligations to the operator or any of the other interested coalbed methane parties.
- (h) Within fifteen (15) days of receiving the review board's decision, the operator, on behalf of itself and other interested coalbed methane parties, shall notify the review board and the mine licensee whether it will accept the amounts awarded by the review board or file an appeal with the Circuit Court in the county where the drilling unit or well site is located challenging the review board's valuation of any of the property or assets.

- (i) If no appeal of the review board's decision is filed by the parties, upon receipt of the compensation due the operator and all other interested coalbed methane parties for each drilling unit and well site selected by the mine licensee for which a mine-through certificate will be issued, the review board shall promptly deliver the awarded compensation to the operator and all other interested coalbed methane parties for the drilling unit and well site and concurrently issue the appropriate mine-through certificate to the mine licensee, with copies to the operator and all other interested coalbed methane parties. If the operator and other interested coalbed methane parties are awarded either the total net present value of the coalbed methane reserves in coal seams to be mined by the mine licensee and all coalbed methane reserves in coal seams completed in a coalbed methane well below such coal seam as provided in paragraph (e)5. of this subsection or the total value of the entire drilling unit and associated assets, upon payment of the compensation, the operator and other interested coalbed methane parties shall simultaneously, if requested by the mine licensee, assign and transfer free and clear of all encumbrances to the mine licensee all of their respective rights, title, and interests in such property and assets, as the case may be, within the drilling unit on a form to be prescribed by the review board. The review board shall take whatever other action that may be deemed appropriate or necessary in the circumstances.
- (j) If either party notifies the review board of a decision to appeal the review board's valuation of any of the subject coalbed methane properties and assets to the Circuit Court, the mine licensee shall deposit with the review board the compensation due the operator and each of the other interested coalbed methane parties for each drilling unit, well site, and any associated assets selected by the mine licensee for which a mine-through certificate will be issued. Upon receipt of the funds from the mine licensee, the review board shall promptly deliver to the operator and the other interested coalbed methane parties one hundred percent (100%) of the awarded compensation for any drilling unit, well site, and any associated assets not listed in any notice of appeal and seventy-five percent (75%) of the awarded compensation to the operator and other interested coalbed methane parties for any drilling unit, well site, and any associated assets for which an appeal is to be filed. Concurrently with delivering the awarded compensation to the operator as provided herein, the review board shall issue to the mine licensee, with copies to the operator and all other interested coalbed methane parties, a mine-through certificate for each drilling unit and well site for which compensation has been received. If the review board's decision with respect to any drilling unit is not appealed and the operator and other interested coalbed methane parties are awarded either the total net present value of the coalbed methane reserves in the coal seam to be mined by the mine licensee and all coalbed methane reserves in coal seams completed in a coalbed methane well below that coal seam as provided in paragraph (e)5. of this subsection or the total value of each drilling unit, well site, and any associated assets, upon payment

of the compensation, the operator and other interested coalbed methane parties shall simultaneously if requested by the mine licensee, assign and transfer free and clear of all encumbrances to the mine licensee all of their respective rights, title, and interests in that property and assets, as the case may be, within the drilling unit or well site on a form to be prescribed by the review board. The review board shall take whatever other action that may be deemed appropriate or necessary in the circumstances to carry out its decision. All funds deposited with the review board shall be placed in an interest-bearing account pending a final resolution of any appeals.

- (k) Within thirty (30) days following the issuance of the review board's decision, the mine licensee or the operator, on behalf of itself and any other interested coalbed methane parties, may file a petition in the Circuit Court of the county in which the drilling unit or well site is located or in the Franklin County Circuit Court disputing the review board's valuation of all or any part of any coalbed methane properties or assets pursuant to this subsection. The parties filing the petition shall name as parties to the action the following: the review board, the mine licensee, all other coal interest holders, the operator, and all other interested coalbed methane parties. Promptly upon receiving notice of the petition, the review board shall deliver any remaining funds deposited by the mine licensee as provided in paragraph (j) of this subsection, together with all interest accrued thereon, to the clerk of the Circuit Court for the county in which the petition is filed and these funds shall be deposited in an interest bearing account pending a decision on the petition. The decision of the Circuit Court shall be made in accordance with the provisions of KRS 349.090. If the Circuit Court determines the operator and other interested coalbed methane parties are entitled to greater compensation than the amount awarded by the review board, the mine licensee shall pay the difference to the clerk of the Circuit Court within fifteen (15) days of the court's decision. Upon receipt of the additional funds awarded by the Circuit Court, the clerk shall promptly deliver to the operator and any other interested coalbed methane parties these funds together with all interest accrued thereon. If the Circuit Court determines that the operator is entitled to less compensation than the amount awarded by the review board, the amount of the reduction shall be refunded to the mine licensee together with any interest that accrued thereon. If the escrowed funds are not sufficient to fully reimburse the mine licensee, the operator and all other interested coalbed methane parties having an interest in the subject coalbed methane properties and assets shall promptly pay the mine licensee for the difference between the escrowed funds and the total amount to be reimbursed pursuant to the Circuit Court's order. If the Circuit Court determines that the operator and other interested coalbed methane parties are to receive either the total net present value of the coalbed methane reserves in the coal seam to be mined by the mine licensee and all coalbed methane reserves in coal seams completed in a coalbed methane well below such coal seam as provided in paragraph (e)5. of this subsection or the total value of the entire drilling unit, well site, and any associated assets, which values may be

increased or decreased by the Circuit Court, upon receipt of the awarded compensation, the operator and other interested coalbed methane parties shall simultaneously if requested by the mine licensee, assign and transfer free and clear of all encumbrances to the mine licensee all of their respective rights, title, and interest in such property and assets, as the case may be, within the drilling unit on a form to be prescribed by the review board.

- (1) Subject to obtaining a decision by the Circuit Court with respect to any appeals initiated pursuant to paragraph (k) of this subsection, the operator and all of the other interested coalbed methane parties' acceptance of the compensation awarded by the review board and of the performance of any duties and obligations by the mine licensee as ordered by the review board shall constitute full and complete consideration to the operator and all of the other interested coalbed methane parties for any and all causes of action, claims, damages, or losses to each drilling unit or any portion thereof, well site, or any associated assets caused by the mine licensee, or any other coal interest holder's subsequent mining operations. The mine licensee shall be liable for any and all injuries, deaths, or damages proximately caused by the mine licensee on, in, or with respect to that property.
- (3) If, after the mine licensee files a notice of intention to mine into or through any coalbed methane properties or assets pursuant to subsection (1) or (2) of this section, the mine licensee's coal mining permit or any pending amendment to an existing permit issued pursuant to KRS Chapter 350 is withdrawn, canceled, delayed, or modified so as to exclude all or any part of the geographic area covering any drilling unit or well site described in the mine licensee's notice, the mine licensee shall promptly advise the review board and operator that it is amending its request for a mine-through certificate to exclude any property that is no longer subject to a coal mine permit or a pending coal mine permit application.

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