

**349.040 Prohibited drilling activities -- Filing requirements for permit application -
- Appeal -- Waiver -- Filing of maps and plans -- Denial of permit.**

- (1) It is unlawful for any person to drill, commence, operate, deepen, convert, or stimulate any coalbed methane well, to conduct any horizontal drilling of a coalbed methane well or to convert any existing oil or natural gas well to a coalbed methane well, without first securing from the department a permit pursuant to this chapter. Before any well, borehole, or facility initially used for a coal mining related purpose, such as a vent hole, is converted for the purpose of recovering coalbed methane for sale or use, the operator shall obtain a permit and comply with the provisions of this chapter prior to the time that the well, borehole, or facility is converted or used for the purpose of recovering coalbed methane for sale or use. It is unlawful for any person to drill, deepen, convert, or reopen a coalbed methane well for the production of oil or natural gas or for the injection of water, gas, or other fluids into any oil or natural gas producing formation until the person has obtained a permit from the department for a petroleum or natural gas well pursuant to KRS 353.570. However, no additional permit fee shall be required if the original permit for the coalbed methane well has not expired.
- (2) Every permit application filed under this section shall be verified and shall contain the following:
 - (a) A statement that the applicant claims to have a valid real property interest in, or the current legal right to produce coalbed methane from a person claiming a valid real property interest in, the coalbed methane. The statement shall identify with specificity the nature of the real property interest and the document or instrument evidencing that interest or right, including recording information of any recorded document or instrument;
 - (b) The names and addresses of the coalbed methane well operator and every person or entity whom the applicant must notify under any section of this chapter;
 - (c) The name and address of each coal interest holder of any workable coalbed which is to be penetrated by a proposed coalbed methane well or within seven hundred fifty (750) horizontal feet or fifty (50) vertical feet of any portion of the proposed coalbed methane well;
 - (d) The name and addresses of each record oil and gas lessee of, the record oil and gas lessor of, and the operator of all oil and gas formations from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract upon which the coalbed methane well is proposed to be located;
 - (e) The coalbed methane well name or such other identification as the department may require;
 - (f) The approximate depth to which the coalbed methane well is to be drilled, deepened, or converted, the coal seams including the depth and thickness of each seam that will be completed for production, and any other coal seams which will be penetrated by the coalbed methane well;

- (g) A description of any means to be used to stimulate any of the workable coalbeds penetrated by the coalbed methane well;
 - (h) If the proposed coalbed methane well will require casing or tubing, the entire casing program for the coalbed methane well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each string is to be cemented;
 - (i) If the proposed operation is to convert an existing petroleum or natural gas well, as defined in KRS 353.010(19), or to convert a vertical borehole or facility initially used for a coal mining related purpose, such as a vent hole, to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;
 - (j) Except for a vent hole proposed to be converted to a coalbed methane well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the coalbed methane well which will protect all workable coalbeds which will be penetrated by the coalbed methane well;
 - (k) If the proposed operations will include horizontal drilling of a coalbed methane well, a description of the operations, including both the vertical and horizontal alignment and extent of the coalbed methane well from the surface to total depth; and
 - (l) Other information as the department may require consistent with this chapter.
- (3) Each application for a coalbed methane well permit shall be accompanied by the following:
- (a) A permit application fee of three hundred dollars (\$300);
 - (b) A bond in an amount prescribed in KRS 349.120;
 - (c) A certificate that the applicant's notice requirements of KRS 349.015 have been satisfied. Certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;
 - (d) If the proposed coalbed methane well will be located within one-half (1/2) of a mile, measuring horizontally, of a water supply well being used for residential or domestic purposes, the applicant will submit the groundwater protection plan required under KRS 224.70-110 and applicable administrative regulations promulgated pursuant thereto for review by the department, or demonstrate to the department that a plan is not required; and
 - (e) Proof that the applicant has public liability insurance coverage in an amount not less than five hundred thousand dollars (\$500,000) in aggregate and three hundred thousand dollars (\$300,000) per occurrence for damages to persons and property caused by the applicant's operations or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations which shall be promulgated by the department.
- (4) Prior to the department's issuance of a permit to drill a coalbed methane well, a copy of the written authorization from the mine licensee shall be filed with the

application under the following circumstances:

- (a) If the proposed coalbed methane well is to penetrate a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the division and if the applicant plans to stimulate, complete, or horizontally drill the coalbed methane well in a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the division;
- (b) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit, or the proposed permitted area of a permit pending before the division for which no bond release has been obtained; or
- (c) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit by the division for which a partial bond release has been obtained.

If a coalbed methane well permit is issued for a well site located within the boundaries of any coal mine for which a permit has been issued or is pending pursuant to KRS Chapter 350, the permit shall include a provision specifically stating that the permitted coalbed methane well location is in an area for which a coal mine permit has been issued or is pending pursuant to KRS Chapter 350 and is subject to the mine-through rights set forth in KRS 349.030(1).

- (5) If a partial bond release for the surface area on which the proposed coalbed methane well is located has been obtained from the division and the applicant is denied written authorization from the mine licensee, the applicant may file an appeal with the review board requesting approval to drill the proposed coalbed methane well. When requesting an appeal, the applicant shall submit a verified statement including the following:
 - (a) The applicant has met and conferred with or offered to meet and confer with the mine licensee concerning the authorization;
 - (b) The mine licensee has refused to provide written authorization to disturb the permitted area;
 - (c) The physical area to be disturbed by the proposed well location and the use of area, including ingress and egress thereto, qualifies as a commercial or industrial postmining land use entitling the mine licensee to a complete bond release for the area to be disturbed by the coalbed methane well operator in accordance with KRS Chapter 350; and
 - (d) The applicant has agreed to pay the reasonable and actual costs of the permit revision required by the division to affect the incremental bond release for the proposed area to be disturbed by the coalbed methane well operator, not to exceed five thousand dollars (\$5,000).
- (6) Prior to the issuance of a permit to drill a coalbed methane well, the applicant shall grant assignable subsidence waivers to any mine licensee if requested in an objection filed pursuant to KRS 349.060 and, if required, to allow present or future mining with planned subsidence under KRS Chapter 350. However, this subsection and any subsidence waivers shall in no way waive, affect, or impair the ability of

the applicant or the applicant's successors or assigns to pursue any remedies for damages to persons, or to improved or tangible property, suffered or incurred as a result of any subsidence caused by the mine licensee or the mine licensee's successors or assigns. The mine licensee, its successors or assigns, shall be liable for any and all damages to persons or to improved or tangible property proximately caused by the mine licensee.

- (7) If the mine licensee is mining in a coal seam that is not being produced by the coalbed methane well operator and has not exercised his or her mine-through rights, as set forth in KRS 349.030(1) or (2), in any coal mine before removing any coal or other material or driving any entry or passageway within five hundred (500) horizontal feet of the vertical segment of a coalbed methane well or within fifty (50) vertical feet of the horizontal segment of a coalbed methane well, the mine licensee shall forward simultaneously to the well operator and to the department, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date. Maps or plans shall show the mine workings and projected mine workings within five hundred (500) horizontal feet of the coalbed methane well. However, the issuance of any coalbed methane well permit shall not preclude or prevent coal mining outside two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of a coalbed methane well or outside of the workable coalbed in which the horizontal segment of a coalbed methane well is located, unless specified by the department for reasons of mine or well safety. The mine licensee shall not mine within fifty (50) feet of the vertical segment of a coalbed methane well without the written authorization of the coalbed methane well operator. A mine licensee may file a request with the department to mine closer than two hundred (200) feet of the vertical segment of the coalbed methane well. The mine licensee shall forward simultaneously to the well operator and the department, by certified mail, return receipt requested, or by registered mail, a request to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, which shall be accompanied by the following:

- (a) A copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine plan workings and projected mine workings beneath the tract of land and within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well; and
- (b) A statement that the applicant has met and conferred with, or offered to meet and confer with, the well operator concerning the mine licensee's plan to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well.

The well operator may, within twenty (20) days of receipt of the documents listed in paragraphs (a) and (b) of this subsection, file specific objections in writing with the department. When objections are filed, the department shall provide a copy of the objections to the mine licensee and fix a time and place for an informal hearing. The hearing shall be held not more than ten (10) days from the end of the twenty (20)

day period. At the hearing, the mine licensee and the well operator, in person or by representative, shall consider the objections and seek agreement on the character and the extent of operations to be conducted within less than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well. If no agreement can be reached, the department, after administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is necessary to be left for the safe protection, use, and operation of the well. The department's decision shall be subject to appeal by either party as provided in this chapter. The department shall keep a complete record of all hearings. The mine licensee shall, every six (6) months, while mining within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, file up-to-date maps and plans required by this section, or file new maps and plans complete to date.

- (8) The department may deny the issuance of a permit if it determines that the applicant has a documented pattern or practice of substantial violations of the provisions of this chapter and has failed to abate or seek review of the violations. If the department finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, the department may suspend the permit. After a suspension, the operator shall forthwith cease all work being conducted under the permit until the department reinstates the permit. The department shall make a written finding of its determination and may enforce the determination in Circuit Court pursuant to KRS 349.145.

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History: Amended 2009 Ky. Acts ch. 79, sec. 9, effective June 25, 2009. -- Amended 2005 Ky. Acts ch. 123, sec. 47, effective June 20, 2005. -- Created 2004 Ky. Acts ch. 65, sec. 8, effective July 13, 2004.