

**353.5901 Operations and reclamation proposal for land with complete severance -- Contents, distribution, and agreement or mediation -- Mediation report.**

- (1) In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, a well operator shall submit to the department an operations and reclamation proposal at the time of filing an application for permit to drill, deepen, or reopen a well. The proposal shall be filed on forms provided by the department and shall include:
  - (a) A proposal to prevent erosion of and sedimentation from the well site and all disturbed areas, including roads;
  - (b) A narrative description of the location of all areas to be disturbed, including the location of roads, gathering lines, the well site, tanks and other storage facilities, and any other information that may be required by the department. Accompanying this narrative description shall be a plat depicting the location on the land of all of these disturbances or facilities;
  - (c) A signed agreement by the surface owners of all disturbed areas to the operations and reclamation proposal; and
  - (d) Any additional information that the department may require.
- (2) In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface and the surface owners of all disturbed areas have not signed agreements with the well operator agreeing to the operations and reclamation proposal, at the time of filing the application the well operator shall cause to be delivered to the surface owners of all disturbed areas who have not agreed to the operations and reclamation proposal, by certified mail, return receipt requested:
  - (a) A copy of the operations and reclamation proposal required by paragraph (a) of subsection (1) of this section, and the narrative description of land disturbances and plat required by paragraph (b) of subsection (1) of this section; and
  - (b) A notice to read as follows: "If you do not agree with the proposed use of your land by the well operator, the well operator may request mediation of your dispute by the General Counsel's Office of the Department for Natural Resources. If mediation is requested, and you decide to participate, each party to the mediation will be charged one hundred dollars (\$100) to help cover the cost of mediation. You will be notified of the time and place for mediation, if the well operator chooses mediation, and of your right to participate."

The certified mail receipt, when returned, shall be filed by the well operator with the department and made part of the permit application.
- (3) If the well operator has been unable to reach agreement with the surface owners of all areas to be disturbed in all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, the permit required by this chapter shall not be issued until the dispute has been referred to mediation by the General Counsel's Office of the Department for Natural Resources, and mediation has been concluded either by agreement between the

parties or by a report of the mediator, in accordance with subsection (4) of this section.

- (4) The well operator may request mediation any time after filing the permit application, and all parties participating in the mediation shall pay a nonrefundable fee of one hundred dollars (\$100) to the Kentucky State Treasurer, which shall be for the sole use of the department and shall be in addition to any money appropriated by the General Assembly for the use of the department. The department shall notify the well operator and all surface owners of areas to be disturbed by drilling who have not agreed to the operation and reclamation plan of the date and time mediation shall be conducted by certified mail, return receipt requested. The department shall conduct mediation at the site proposed to be disturbed within fifteen (15) days from the date requested, if practicable. At the mediation, the mediator will attempt to facilitate an agreement between the well operator and the surface owner. If an agreement is not forthcoming after mediation, the mediator shall, within five (5) days after mediation, issue a report to the director of the Division of Oil and Gas recommending that the director:
  - (a) Accept the proposal as submitted by the well operator; or
  - (b) Accept the proposal with modifications set forth by the mediator.
- (5) If an agreement between the well operator and the surface owners of all disturbed areas is not forthcoming after mediation, the mediator shall consider the following factors as to the reasonable use of the surface by the well operator in issuing a report to the director, which recommendations shall become permit conditions:
  - (a) The location of roads, gathering lines, and tank batteries;
  - (b) The timing of the operation, considering seasonal uses of the land by the surface owner and the need of the well operator to drill expeditiously;
  - (c) The impact on the other uses of the land by the surface owner, including the location of timber, houses, barns, ponds, crops, and other improvements;
  - (d) Whether the proposal includes a plan for timely, effective reclamation of all disturbed areas; and
  - (e) Any other information deemed appropriate by the mediator.
- (6) The director shall act upon the recommendation of the mediator within five (5) days of the receipt of the mediation report.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1908, effective July 15, 2010. -- Created 1994 Ky. Acts ch. 127, sec. 2, effective July 15, 1994.