

**349.085 Duties of person requesting pooling order -- Notice to interested persons -- Review board to rule on request for pooling order -- Contents of pooling order -- Rights and financial shares of interested parties -- Escrow account.**

- (1) The person requesting a pooling order shall provide to the department a list of all persons reasonably known to own an oil or gas interest and all coal interest holders, in any tract upon which the coalbed methane well will be located from the surface to a depth of one hundred (100) feet below the base of the deepest coal seam to be penetrated. A pooling order shall be made only after the department provides notice to all persons reasonably known to own an oil or gas interest and all coal interest holders in any tract upon which the well will be located and any tract or portion thereof proposed to be pooled in any drilling unit, from the surface to a depth of one hundred (100) feet below the base of the deepest coal seam to be penetrated, after a hearing has been held. After filing an application for a pooling order under KRS 349.080(1), where unknown or nonlocatable owners exist, or at the request of the permit applicant or person requesting a pooling order, the permit applicant shall publish, at least twenty (20) days prior to the hearing on the application for the pooling order, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, proposed to be pooled is located. The notice shall:
  - (a) State that an application for a pooling order is being filed with the review board;
  - (b) Describe any tract, or portion thereof, proposed to be pooled;
  - (c) In the case of an unknown owner, identify the name of the last known owner;
  - (d) In the case of a nonlocatable owner, identify the owner and the owner's last known address; and
  - (e) State that any party claiming an interest in any tract, or portion thereof, proposed to be pooled should contact the permit applicant at the published address and provide a copy of the notification to the review board within twenty (20) days of the date of the publication.
- (2) The review board shall grant or deny the request for a pooling order and issue an order consistent with the intent and purposes of KRS Chapters 350 and 352 and this chapter, taking into consideration the following factors that it considers applicable in the particular proceeding:
  - (a) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells and the spacing requirements of KRS 349.075;
  - (b) The plan of development of the coal and the need for proper ventilation of any mines or degasification of any affected coal seams;
  - (c) The nature and character of any coal seam or seams which will be affected by the proposed coalbed methane well or wells;
  - (d) The surface topography and mineral boundaries of the lands underlaid by the coal seams to be included in the unit;
  - (e) Evidence relevant to the proper boundary of the drilling unit;

- (f) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;
  - (g) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well or wells within the drilling unit; and if so, whether the applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;
  - (h) Whether a disagreement exists among the coalbed methane owners or claimants over the designation of the operator for any coalbed methane wells within the unit, and if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the unit for the benefit of the majority of the coalbed methane owners;
  - (i) If more than one person is interested in operating a coalbed methane well within the unit, the estimated cost submitted by each such person for drilling, completing, operating, and marketing the coalbed methane from any proposed coalbed methane well or wells;
  - (j) Any other available geological or scientific data pertaining to the pool which is proposed to be developed;
  - (k) The correlative rights of the operators and owners of the coalbed methane, so that each operator and owner may obtain his or her just and equitable share of production from the coalbed methane; and
  - (l) Any other factor the review board determines should be considered consistent with KRS Chapters 350 and 352 and this chapter.
- (3) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon whether to grant a pooling order, and shall enter a written order containing findings of fact and conclusions which address any relevant considerations in subsection (2) of this section and based thereon shall issue and file with the department a written order granting the pooling order with any applicable conditions or denying the pooling order.
- (4) A pooling order shall authorize the drilling, deepening, or reopening, and the operation of a well for the production of coalbed methane on the tracts or portions thereof pooled; shall designate the operator to drill and operate the well; shall prescribe the time and manner in which all owners of working interests in the pooled tracts or portions thereof may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, deepening, converting or reopening, and the completing, operating, plugging, and abandoning the well shall be borne, and all production from the well shall be shared, by all owners of working interests in proportion to the net mineral acres in the pooled tracts owned or under lease to each owner; and shall make provision for the payment of the reasonable and actual cost thereof, including a reasonable charge for supervision, by all those who elect to participate therein.
- (5) A pooling order shall establish a procedure for the owner who claims a working interest and who does not decide to become a participating working interest owner to elect to either:

- (a) Surrender, by means of sale or lease, the interest to a participating working interest owner on a reasonable basis and for a reasonable consideration, which if not agreed upon shall be one-eighth (1/8) of the production attributable to the well; or
  - (b) Share in the operation of the well as a nonparticipating working interest owner on a carried basis after the proceeds allocable to his or her share equal to two hundred percent (200%) of the share of the costs allocable to his or her interest.
- (6) A coalbed methane owner or claimant whose identity and location remain unknown at the conclusion of the hearing concerning the entry of a pooling order for which public notice was given and whose interest is pooled pursuant to KRS 349.080(1) shall be deemed to have elected to lease the interest to the coalbed methane operator, exclusive of one-eighth (1/8) of the production attributable to the unleased interest, and shall not be entitled to make the election established in subsection (5) of this section.
- (7) Except as provided in this section, a coalbed methane owner who does not make an election under the pooling order within thirty (30) days of the entry of the order shall be deemed to have leased the coalbed methane interest to the coalbed methane well operator in the manner established in subsection (6) of this section.
- (8) A person whose interest is subject to a coalbed methane lease or other agreement which grants to another the right to operate or conduct operations shall not own an operating interest for the purposes of this section.
- (9) A certified copy of any pooling order entered under this section shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located, and the record of the order, from the time of lodging the order for record, shall be notice of the order to all persons.
- (10) Each pooling order for a coalbed methane well issued pursuant to KRS 349.080(1) shall provide for the establishment of an interest-bearing escrow account to be maintained by the department. The escrow account shall receive deposits and hold payment for costs and proceeds attributable to the conflicting interests as follows:
- (a) Each participating working interest owner, except for the unit operator, shall deposit in the escrow account the owner's proportionate share of the costs allocable to the ownership interest claimed by each participating working interest owner as set forth in the pooling order; and
  - (b) The unit operator shall collect all proceeds from the sale or use of coalbed methane and deposit in the escrow account all proceeds attributable to the conflicting interests of lessors, lessees, or royalty owners and all proceeds in excess of the recovery of all capital costs and expenses and all ongoing operational expenses including reasonable overhead costs and operating fees attributable to conflicting working interests.
- (11) The department shall order payment of principal and accrued interest from the escrow account to all legally entitled entities within thirty (30) days of receipt by the department of notification of the final legal determination of entitlement or upon

agreement of all entities claiming an ownership interest in the coalbed methane. Upon the department's final determination:

- (a) Each legally entitled participating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest;
- (b) Each legally entitled nonparticipating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest, less the cost of being carried as a nonparticipating working interest owner as determined by the election of the person under the applicable pooling order;
- (c) Each person leasing or deemed to have leased its coalbed methane ownership interest to the unit operator shall receive a share of the royalty proceeds as set out in the applicable pooling order attributable to the conflicting interests of the lessees;
- (d) The unit operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner, but only to the extent that the costs and expenses described in subsection (10)(b) of this section have not been recouped from production proceeds;
- (e) Each participating working interest owner who is determined not to hold an ownership interest shall receive a refund of all amounts placed in escrow pursuant to subsection (10)(a) of this section plus interest earned thereon; and
- (f) All amounts remaining in escrow, after distribution of amounts described in paragraphs (a), (b), (c), (d), and (e) of this subsection, shall be distributed to the legally entitled participating working interest owners in proportion to their interests.

**Effective:** July 13, 2004

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