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WORKING FOR JUSTICE IN ENVIRONMENTAL POLICY

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Michael Mullins, Regulation Coordinator  
300 Sower Boulevard  
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By email: [Michael.Mullins@ky.gov](mailto:Michael.Mullins@ky.gov)

Dear Mr. Mullins:

These comments are submitted regarding the proposed amendments to 805 KAR Chapters 1 and 9. The Council appreciates this opportunity to comment on the proposed amendments.

**805 KAR 1:001**

The Council opposes the replacement of the term “existing gathering line” in (18) with “flow line,” and likewise opposes the replacement of the term “gathering line” with “flow line” where it appears currently in the definitions of “gas production flow line” and in the definition of “gathering line” in the current regulations.

The term “gathering line” is used in KRS 353.500(2), and the specific authority (and obligation) of the Cabinet to regulate such lines was recognized in that statute at the same time that local regulation of such lines (or any other aspect of oil or gas production) was preempted outside of KRS Chapter 100. Additionally, the term “gathering lines” rather than “flow lines” is utilized by the U.S. Department of Transportation in 49 C.F.R. Parts 191, 192, 194, and 195 to identify those lines that “transport[] gas from a current production facility to a transmission line or main.”

In order to maintain consistency with the federal regulatory framework, which exempts certain gathering lines from federal jurisdiction, and to assure that as the U.S. DOT moves forward to revisit federal standards for certain gathering lines, the use of “gathering line” rather than “flow line” is necessary and advisable.

KRC recommends that each of the proposed changes from “gathering line” to “flow line” be reconsidered and the current definitions retained.

#### **805 KAR 1:020**

In Section 2(1), the Council believes that retention of the word “protective” is important in order to alert the operator that the purpose of and the expectation for the string of casing described in that section, is to *protect* fresh water from contamination by oil and gas and related production or stimulation fluids, and conversely to prevent waste of oil or gas resources.

#### **805 KAR 1:030**

The Council supports *not* limiting “well,” as used in 805 KAR 1:030, to oil and gas wells, since to do so would be inconsistent with the statutory definition of “Well” that includes, in addition to “a borehole: (a) Drilled or proposed to be drilled for the purpose of producing gas or oil; (b) Through which gas or oil is being produced;” a borehole “[d]rilled or proposed to be drilled for the purpose of injecting any water, gas, or other fluid therein or into which any water, gas, or other fluid is being injected[.]”

The preparation and filing of reports and plats for injection wells for water, gas, or other fluids, should be subject to the same requirements for location and as-drilled plats.

The current requirement prohibiting the drilling of an oil or gas well within 150 feet of a dwelling, was imposed at a time when a vertically-drilled well was what “drilling” envisioned.

In order to assure protection of occupied dwellings from encroachment of horizontal drilling operations, the regulation should be amended to clarify that where horizontal drilling is proposed, there shall be maintained a buffer of 150 feet around any occupied dwelling from any horizontal well works, unless waived.

In Section 7, the location of existing wells utilized for drinking water or other beneficial uses should also be required to be located on the plat, in order to alert both the operator and the Cabinet of the proximity of the proposed well(s) to existing water supplies from groundwater sources. Such information will assist the Cabinet inspector in assuring that any fresh water zones are properly isolated and cased.

#### **805 KAR 1:050**

In Section 5, it is unclear whether the notice of noncompliance is intended to be sent *only* to the operator, or whether the notice is also to be sent to the address of record *for the surety or other guarantor*. It should be the latter, since in order to have the opportunity to act on behalf of the operator within the time period allowed, notice is necessary to alert the surety or other guarantor, and to close the time period for action.

#### **805 KAR 1:060**

In new Section 1, consider including a parenthetical after “gas,” since coal-bed methane is collapsed into this set of regulations, to read “a well drilled for oil, gas **(including coalbed methane)**, salt water disposal,....”

New Section 2, regarding notice for plugging an Oil or Gas Well, uses the singular in Section 2(2) *except* that (2) says “The notice for plugging wells shall include...”

For clarity’s sake, I would recommend that the singular “plugging a well” be used, so that it is clear the notice must include, if more than one well is proposed for plugging, the permit number, location, and fixed time for commencement for *each* well.

In Section 4, it is important to retain the current language requiring isolation from a workable coal bed of any water-bearing zone, rather than only waters usable for beneficial purposes, since I believe that the intent is in part to isolate such zones from potential flooding of the workable coal seams if coal production occurs in the future.

#### **805 KAR 1:080**

The Council supports the continued use of “well” as opposed to a more narrow “oil or gas well” since the purpose of the regulation is to protect the integrity of gas reservoirs by requiring that techniques for drilling, casing, operating, plugging, and abandonment are undertaken when operating in the vicinity of such reservoirs. An improperly constructed injection well for fluid disposal can, like a production well, impair that integrity. *All* wells subject to KRS Chapters 349 and 353 must be covered by the regulation.

#### **805 KAR 1:110**

In Section 6, where there has been an initial failure to demonstrate mechanical integrity, the operator should be required to notify the Cabinet of what corrective measures will be undertaken, and when those measures will be undertaken and completed, so that the division field inspector can witness such measures if necessary. An open-ended allowance of unlimited time in which to complete corrective measures is not appropriate.

In Section 8, the syntax should be revised to be most internally consistent, so that it reads that “The owner or operator of a Class II well shall demonstrate financial responsibility to plug and abandon the well” rather than “all Class II wells” and “a well.”

#### **805 KAR 1:140**

One of the workgroup comments suggested that the Cabinet incorporate two API documents regarding blowout preventer systems. The Council agrees that blowout preventers are among the most critical pieces of equipment associated with such wells, and that the equipment must be fit for its intended purpose and be properly installed and tested. Rather than referring to an industry-generated report, however, the Council

recommends that there be a specific statement to the effect that “blowout prevention equipment shall be properly installed in accordance with manufacturer recommendations, shall be appropriate for the proposed working pressures, shall be tested after installation at pressures twice the proposed working pressure in order to assure proper functioning, and shall be periodically tested as directed by the Cabinet.”

**805 KAR 1:170**

The Council does not object to including language alerting the operators of the potential need for preparation and implementation of a Storm Water Pollution Prevention Plan (SWPP) if the disturbed area (including access road) exceeds the five-acre threshold.

**805 KAR 1:190**

The Council supports retention of the use of the phrase “gathering line” rather than distinguishing flow lines to separators, since as defined “gathering lines” is broad enough to encompass lines from the well and to or from the initial treatment / separator to the transmission main. Using “gathering lines” is consistent with both KRS 353.500 and federal regulation.

**805 KAR 1:200**

The Council questions whether an owner or operator should be allowed, after investigating for testing an abandoned oil or gas well and determining not to assume ownership of the well, be able to simply walk away from the well by closing it at the surface. There are several concerns. First, there is no assurance that the abandoned oil or gas well was properly cased and cemented to isolate the well from aquifers, and depending on the testing conducted, it could result in contamination of such aquifer(s). Second, there is no notice to the landowner where an owner or operator proposes to test an abandoned well, and such a requirement is needed to both notify the owner and operator and to assure that the party testing the well has the legal right to enter and do so. Finally, the testing of an abandoned well resulting in a decision that it is non-productive, should be accompanied by a requirement to *at least* temporarily and properly plug the well, since it is unclear what priority that well might have for permanent plugging and proper abandonment by the state.

Thank you in advance for your consideration of these comments.

Cordially,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Tom FitzGerald

Director