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# Kentucky

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# KENTUCKY


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## I. POST-PRODUCTION COSTS

### A. Poplar Creek Dev. Co. v. Chesapeake Appalachia L.L.C.

Post-production costs, and whether or not they may appropriately be deducted from royalty payments, have recently become a hot topic of debate. Many states have considered the issue, but have arrived at different conclusions. This precise issue was presented to the United States Court of Appeals for the Sixth Circuit in *Poplar Creek Dev. Co.*

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*v. Chesapeake Appalachia, L.L.C.*, decided February 17, 2011.[2] Applying Kentucky law, the court held that Kentucky allows for the deduction of post-production costs prior to paying appropriate royalties.[3]

*Poplar Creek* was a consolidation of two cases: (1) Case No. 09-5914, whereby Plaintiff Poplar Creek Development Company ("Poplar Creek") claimed that Defendant Chesapeake Appalachia, L.L.C. ("Chesapeake") improperly deducted costs incurred to market gas away from the wellhead from the basis of calculation of royalty payments; and (2) Case No. 10-5373, whereby Plaintiffs John Thacker and Jackson Rowe, Inc. filed a class action suit on behalf of Kentucky landowners who leased natural gas to the Defendants, Chesapeake, NiSource, Inc., and Columbia Energy Group. Certain class members appealed an approved settlement order based upon similar grounds as those asserted by Poplar Creek. The resolution of both cases revolved around the meaning of the royalty payment provision contained within the subject leases, which stated that royalties were to be paid at the "wholesale market value of [such] gas at the well."[4]

In assessing the foregoing phrase, states tend to follow one of two main viewpoints (or some combination thereof): the "marketable-product" rule or the "at-the-well" rule. The "marketable-product" rule holds all post-production costs must be borne by the operator because he has an implied duty/covenant to market the gas.[5] The "at-the-well" rule reasons that, despite the existence of such a duty, it does not extend to expenses incurred in sales beyond the wellhead; therefore post-production costs should be shared between the working interest and royalty owners.[6]

Noting that Kentucky law requires the wording of a contract to be construed in accordance with its plain meaning, the court emphasized that the subject leases expressly specified the well as the point at which the royalty was to be computed.[7] The court also relied on *Cumberland Pipe Line Co. v. Commonwealth*,[8] where the Kentucky Court of Appeals explained that "there is seldom, if ever, a market at the place of production," and thus, since the product must be carried to the markets, "the value at the place of production is the selling price less the cost of transportation to the place of sale."[9] Although *Cum-*

2. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C., 636 F.3d 235 (6th Cir. 2011).
3. *Id.* at 244.
4. *Id.* at 240.
5. *See id.*
6. *See id.* at 240–41.
7. *See id.* at 242.
8. 15 S.W.2d 280 (Ky. 1929).
9. *Poplar Creek*, 636 F. 3d at 243–44 (quoting Cumberland Pipe Line Co. v. Commonwealth, 15 S.W.2d 280, 284 (Ky. 1929) (in reference to petroleum oil)). This conforms with prior Kentucky law for timber and coal; the calculation must allow for

*berland Pipe Line Co.* only specifically mentioned transportation costs, the *Poplar Creek* court denied the argument that other post-production costs should be excluded from the realm of permissible deductions, opining that (1) gathering, compression, and treatment expenses are not "materially distinguishable" from transportation costs; and (2) Kentucky law "strongly suggests" that the deduction of such costs from the market value [of gas] would be necessary to determine the value at production.[10]

*Poplar Creek* ultimately held that "Kentucky follows the 'at-the-well' rule, which allows for the deduction of post-production costs prior to paying appropriate royalties."[11] The court defined "at-the-well" to refer to "gas in its natural state, before [it] has been processed or transported from the well."[12] The gas sold by the defendants in the present case was not sold "at-the-well" within the meaning of that term, and accordingly, under Kentucky law, they were entitled to subtract gathering, compression, and treatment costs before paying royalties on the market of the gas.[13]

### B. K & D Energy v. KY USA Energy, Inc. (In re KY USA Energy, Inc.)

The United States Bankruptcy Court for the Western District of Kentucky, Bowling Green Division, considered similar post-production arguments in *K & D Energy v. KY USA Energy, Inc.* on motions for partial summary judgment. The court held that the *Poplar Creek* case, discussed above, is "dispositive of the issues."[14] Finding that Kentucky jurisprudence was thoroughly analyzed and followed in *Poplar Creek*, the Bankruptcy court affirmed that Kentucky follows the "at-the-well" rule.[15] It also reiterated that the implied duty of marketability "does not prohibit the reasonable costs of production of gas treatment from being passed along to a lessor or landowner."[16]

## II. Right to Capture Coal Bed Methane ("CBM")

A source of much controversy among the states is who has the right to produce the coal bed methane ("CBM"): the coal owner, the gas owner, or some other owner. The Kentucky Court of Appeals consid-

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"adjustments to care for the cost of transportation to that market." *Id.* at 244 (quoting *Cumberland Pipe Line Co.*, 15 S.W.2d at 284 (citing Log Mountain Coal Co. v. White Oak Coal Co., 174 S.W. 721 (Ky. 1915); Campbellsville Lumber Co. v. Bradlee & Wiggins, 29 S.W. 313 (Ky. 1895))).

10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. K & D Energy v. KY USA Energy, Inc. (*In re* KY USA Energy, Inc.), 448 B.R. 191, 196 (Bankr. W.D. Ky. 2011).
15. *Id.*
16. *Id.* at 195.

ered this topic in *Bowles v. Hopkins County Coal, L.L.C.*[17] The precise issue presented was whether CBM is part of the veins and beds of coal, or is it another mineral separate from the coal.[18] Strictly limiting its ruling to the case at bar, the *Bowles* Court held that "the owners of the coal estate may produce the CBM while it is present in the coal seam or vein, but that it is subject to capture by the owner of the mineral estate in the event that it should migrate from the coal seam or vein."[19]

Eva Cardwell owned the subject property, comprised of 1060.99 acres in Kentucky, in fee simple. In 1924, she conveyed all of the veins and beds of coal and underlying fire clay but reserved ownership of the surface and "all other minerals and mineral rights."[20] The Appellants, as the owners of "all other minerals," argued that they were the true owners of the CBM. The circuit court initially agreed with Appellants, but later changed its ruling, stating that Appellants could capture the CBM once it escaped the coal seam or vein, but until such time, while still located within the coal seam or vein, the CBM was owned by the coal owner.[21] The circuit court later entered an order which found that the Appellants were entitled to produce CBM located in the voids of the coal created by the coal mining operations but only after confirming that all operations had been completed.[22]

On appeal, the Court of Appeals noted that, at the time of the coal severance and reservation of "all other minerals," CBM was not a profitable substance but was instead considered a "valueless, dangerous waste product."[23] Thus, neither party to the conveyance could have anticipated that by reserving "all other minerals" CBM would be reserved.[24] To hold that Appellants owned the CBM while it remained in the coal beds would reinforce an unbargained for exchange, making the original conveyance worth less than the consideration given for it.[25] Accordingly, the court held that CBM actually located within the strata of the coal beds may be captured only by the owners of the coal beds.[26]

However, looking to *Texas American Energy Corp. v. Citizens Fidelity Bank & Trust Co.*, the court also affirmed the application of the rule of capture to CBM, reciting that "oil and gas belong to no one but instead are subject to capture and ownership by the owner of the land

17. Bowles v. Hopkins Cnty. Coal, L.L.C., 347 S.W.3d 59 (Ky. Ct. App. 2011).
18. *Id.* at 64.
19. *Id.* at 65 n.5.
20. *Id.* at 60.
21. *Id.* at 61.
22. *Id.* at 61–62.
23. *See id.* at 64.
24. *Id.* at 65.
25. *Id.*
26. *Id.*

upon which they reside at any given time."[27] While the *Texas American Energy Corp.* case discussed the rule of capture specifically as it pertained to oil and gas, the *Bowles* Court found this rule applied equally to CBM. Thus, it further held that when "CBM is released from the coal beds, it is then available to be captured by the owner of whatever property to which it migrates . . . ."[28]

Significantly, the court explained that its holding was "not dispositive of the issue of CBM ownership as a whole," recognizing that the same issue under different circumstances may result in a "dissimilar outcome."[29] The court also clarified that, rather than addressing the "ownership" of CBM, the instant opinion should be read to address "which party possesses the right to capture."[30]

As a secondary issue, although addressed in dicta, the *Bowles* opinion discussed the applicability of restrictive covenants to the preservation of the mineral estate. The original coal conveyance not only reserved "all other minerals" but also contained a restrictive covenant which prohibited coal mining by either the stripping or open-pit methods.[31] Appellants argued that the intent of the parties should govern the application of the restrictive covenant, alleging that it was intended to protect the interests of the surface owner.[32] While the court agreed that Appellants had no standing to challenge the validity of the restrictive covenants as they no longer owned an interest in the surface or the coal,[33] it affirmed that the restrictive covenant was extinguished by means of merger since a common entity acquired ownership of the coal seams and the surface.[34] Appellants later alleged that the intent behind the restrictive covenant was to "protect the mineral estate by preserving the property surface."[35] The court ultimately refused to address this argument as Appellants failed to offer any evidence of said intent and also failed to present the argument to the trial court, but did note that it presented an "interesting argument."[36]

## III. Property Interest Conveyed by a Farmout Agreement

In *K & D Energy v. KY USA Energy, Inc*, the United States Bankruptcy Court for the Western District of Kentucky, Bowling Green Division, addressed the issue of whether Farmout Agreements are ex-

27. *Id.* at 64 (citing Tex. Am. Energy Corp. v. Citizens Fid. Bank & Trust Co., 736 S.W.2d 25, 28 (Ky. 1987)).
28. *Id.* at 65.
29. *Id.*
30. *Id.*
31. *Id.* at 60.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*

ecutory contracts or unexpired leases, and what interests are transferred thereby.[37] Ultimately, the Court found that the Farmout Agreements were neither executory contracts nor unexpired leases, but that they conveyed an interest in real property rather than a mere lease.

Defendant KY USA Energy, Inc. (the "Debtor") filed for Chapter 11 Bankruptcy. K & D Energy, a Kentucky partnership and individuals Michael and Kimberly Slinker, Randall Francis, Larry Grace, Billy Hunter and Wilma J. Hunter (the "Plaintiffs") instituted an adversary proceeding, from which a Motion for Partial Summary Judgment stemmed.[38] On November 8, 2010, in the main bankruptcy case, Debtor filed an Expedited Motion to Compel Plaintiffs K & D Energy and Thompson Petroleum to turnover assignments of three individual oil and gas well locations pursuant to the terms and conditions of certain Farmout Agreements which pertained to the right to construct oil and gas wells on the related properties.[39] Debtor subsequently filed a Motion for Partial Summary Judgment on Counts III and IV of Plaintiffs' Complaint, which sought to declare the Farmout Agreements "executory contracts and/or unexpired leases subject to assumption and/or rejection by Debtor," and additionally sought to have all defaults alleged in the Complaint with respect to the Farmout Agreements cured in accordance with 11 U.S.C. § 365 if the Farmout Agreements were deemed executory contracts or unexpired leases and the Debtor intended to assume them.[40] Plaintiffs founded their contentions on a section of the Kentucky Mineral Code, which states that Farmout Agreements are executory contracts.[41]

The court first noted that whether a contract is an "executory contract" is a question of federal law, rather than state law.[42] Federal law has held that executory contracts do not include contracts "fully performed by one of the parties."[43] Significantly, K & D Energy asserted in its Complaint that it had performed all of the conditions required under the terms of the Farmout Agreements.[44] In response to the cited Kentucky law, the court reasoned that the same treatise also stated that "farm-out agreements are usually in the form of 'unre-

37. K & D Energy v. KY USA Energy, Inc., 444 B.R. 734, 736 (Bankr. W.D. Ky. 2011).

38. *Id.* at 735.

39. *Id.*

40. *Id.* at 735–36. 11 U.S.C. § 365 deals with the administration of executory contracts and unexpired leases in bankruptcy proceedings.

41. *Id.* at 736.

42. *Id.* at 737 (citing Benevides v. Alexander (*In re* Alexander), 670 F.2d 885, 888 (9th Cir. 1982); Brown v. Snellen (*In re* Giesing), 96 B.R. 229 (Bankr. W.D. Mo. 1989)).

43. *Id.* at 737 (citing Bronner v. Chenoweth-Massie P'ship (*In re* Nat'l Fin. Realty Trust), 226 B.R. 586 (Bankr. W.D. Ky. 1998); *In re* Farrar McWill, Inc., 26 B.R. 313, 314 (Bankr. W.D. Ky. 1982)).

44. *Id.*

corded letter agreements'. . .used for the drilling of a test well and other obligations in exchange for a recordable instrument."[45] The presented agreements were distinguishable because, not only were they recorded, but they explicitly assigned oil and gas leases.[46] Therefore, the court held that the Farmout Agreements could not be considered executory contracts.[47]

Further, the court explained that "[i]t is well settled by many courts that an oil and gas lease is not an executory contract because the rights conveyed are an interest in real estate and not truly a lease."[48] Kentucky law agrees that an oil and gas lease constitutes a conveyance of an interest in realty, so thus, the Farmout Agreements also cannot be considered unexpired leases.[49] Accordingly, the court found that the Farmout Agreements were not subject to the requirements of 11 U.S.C. § 365.[50]

In discussing the standard for granting summary judgment, the court acknowledged that, in order to survive such a motion, there must remain genuine issues of material fact.[51] Plaintiffs argued that Debtor did not comply with its obligations under the Farmout Agreements and thus was not entitled to receive the assignments or a favorable judgment on its motion.[52] However, the court reasoned that allegations of default under the Farmout Agreements, or a breach under the same, does not, as a matter of law, prevent a grant of summary judgment in favor of the Debtor since such a ruling would merely serve to deem the Farmout Agreements not executory contracts or unexpired leases.[53] As such, the court entered summary judgment in favor of Debtor on Counts III and IV.[54]

## IV. Construction of Deeds and Assignments

In *The Cadle Company II v. Gasbusters Prod. I Limited Partnership*,[55] the United States Court of Appeals for the Sixth Circuit reviewed several issues on appeal in a bankruptcy proceeding. Among various procedural and evidentiary issues raised was deed and assignment construction under Kentucky law. The bankruptcy court found that Appellee Gasbusters had an ownership right to assert claims

45. *Id.* at 736.
46. *Id.* at 736–37 ("'[A]ssignor. . .does hereby bargain, transfer and assign to Assignee . . . the following described Oil and Gas Leases: . . .'").
47. *Id.* at 737.
48. *Id.* (citing River Prod. Co. v. Webb (*In re* Topco, Inc.), 894 F.2d 727, 737 n.17 (5th Cir. 1990)).
49. *Id.*
50. *Id.*
51. *See id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. Cadle Co. II, Inc. v. Gasbusters Prod. I Ltd. P'ship, No. 10-5060, 2011 WL 4000858, at *1 (6th Cir. Sept. 9, 2011).

against the Paul estate, which included the operation and management of fifteen oil and gas wells; most of the assets of the Paul estate purchased by Appellant Cadle.[56] Cadle appealed the finding of ownership right, arguing that the court erred on three separate grounds (only two of which are discussed below).

First, Appellant argued that the Gasbusters formation documents and well transfer agreements, on which Appellee relied to assert an ownership interest, were deficient in that they contained numerous grammatical errors and name inconsistencies that were never corrected and therefore rendered them unenforceable.[57] The documents which the Appellant challenged included, among others: (1) limited liability partnership agreement; (2) certificate of limited liability partnership; (3) purchase and sale agreement for the fifteen wells; (4) assignment of lease; and (5) deed of oil and gas rights.[58]

Kentucky law governs the resolution of this issue as it pertains to real property.[59] The court explained that, when construing any contract, including a deed or an assignment, "the court's primary object[ive] is to discover the intent of the parties through a fair examination of the document as a whole."[60] Such a "fair examination" remains within the "four corners" of the document where there is no ambiguity.[61] Where there is ambiguity and/or mutual mistake, Kentucky law allows a court to look beyond the document to parol evidence and extrinsic facts.[62]

In examining a document, Kentucky abides by several general rules; while these rules are specifically applicable to deeds, their rationales may be attributed to the examination of other written contracts as well. Kentucky has long held that deeds will be upheld, regardless of how informally drafted, where "the terms are sufficient to express the intention of the parties."[63] Even "inartfully and untechnically drawn" deeds will be given liberal construction to gather the intent of the parties thereto.[64] Deeds are generally held to be valid if they include: "the names of the parties; the consideration; a description of the subject granted; the quantity of the interest conveyed; and the conditions, reservations or covenants, if any."[65]

56. *Id.*

57. *Id.* at *5.

58. *Id.* at *5–6.

59. *Id.* at *5.

60. *Id.*

61. *See id.*

62. *Id.* (citing Ingram v. Ingram, 283 S.W.2d 210, 212 (Ky. 1955); Senters v. Elkhorn & Jellico Coal Co., 145 S.W.2d 848, 850 (Ky. 1940); Va. Iron, Coal & Coke Co. v. Combs, 177 S.W. 238, 238 (Ky. 1915); Day v. Asher, 132 S.W. 1035, 1036 (Ky. 1911)).

63. *Id.*

64. *Id.*

65. *Id.*

Although the previously described documents contained numerous errors in the partnership name, in addition to grammatical and typographical errors, the court found that there was overwhelming evidence in those same documents that Gasbusters owned the wells.[66] Specifically, the bankruptcy court pointed to the following facts, among others, as conclusive proof of ownership: the use of a name similar to "Gas[b]usters Production I Limited Partnership" as a grantee of four of five well transfer documents; Gasbusters was formed expressly for the purpose of acquiring the wells; and no party other than Appellant had ever come forward to challenge Gasbusters's ownership.[67] The Sixth Circuit agreed, holding that "a fair consideration of the instruments in their entirety demonstrates that [Gasbusters] was the intended transferee . . . of the wells . . . ."[68]

Second, Appellant argued that the bankruptcy court erred in relying on a settlement agreement from a separate lawsuit, alleging that Gasbusters had defaulted on the well transfer agreements described above, as support that Gasbusters has an ownership interest in the wells.[69] The bankruptcy court had determined that the language in that agreement, and its subsequent dismissal order, was persuasive as it provided further evidence of Gasbusters's ownership interest as recognized by Paul and Burgess, the transferors, as well as the adjudicating court.[70] The Sixth Circuit found that these documents were properly considered in that they resolved some ambiguity created by the use of various titles for Gasbusters.[71] Because of that ambiguity, the court was entitled to look beyond the four corners of the documents at bar to the settlement agreement.[72]

## V. Kentucky Legislative Updates

### A. *Wastewater Commission Created*

On March 17, 2011, Governor Steve Beshear signed HB 26,[73] which created a regional wastewater commission in a pilot project area consisting of Bullit, Hardin, Jefferson, Meade, and Oldham Counties.[74] The purpose of the commission is to "preserve water quality and developing infrastructure in the Salt River Basin sufficient to promote and sustain industrial, commercial, and residential development."[75] The regionalization of utility service will spread the cost capital and

66. *Id.* at *6.
67. *Id.* at *6–7.
68. *Id.* at *7.
69. *Id.*
70. *Id.*
71. *Id.* at *8.
72. *Id.*
73. *HB 26 Legislative Record*, Ky. Legislature, http://www.lrc.ky.gov/record/11RS/HB26.htm (last visited December 16, 2011).
74. Ky. Rev. Stat. Ann. § 65.8901(1)(f) (LexisNexis Supp. 2011).
75. *Id.*

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operating costs among more users while protecting and enhancing water quality.[76] The Act notes that economic growth depends on infrastructure to support, among other things, industrial and commercial growth, which still must be undertaken in a way that safeguards regional water sources.[77]

The following "member entities" located in the previously described counties are eligible to participate in the commission:

> (a) a city that owns a wastewater system; (b) an urban-county government that owns a wastewater system; (c) a sanitation district created pursuant to KRS Chapters 67 and 220; (d) a metropolitan sewer district or a joint sewer agency established under KRS Chapter 76; (e) a water district that owns a wastewater system established under KRS Chapter 74; and (f) an agency of the federal, state or local government owning a wastewater system subject to regulation by the Kentucky Division of Water.[78]

"Wastewater" is defined within the Act as follows:

> raw, untreated or partially treated sewage and other polluted waters collected by lateral and main lines from residential, commercial, and industrial customers of wastewater systems owned by or under contract with a member entity of a commission and properly conveyed to designated receiving points for further transportation or treatment.[79]

Significantly, wastewater is also defined to include stormwater,[80] which has the potential to capture runoff from oil and gas construction sites.

Any two or more member entities may jointly adopt a resolution or ordinance electing to participate with other member entities in a commission to engage in one or more of the following activities: acquire and construct wastewater collection, transportation and treatment facilities; operate and manage those facilities; and improve and extend those facilities in any lawful manner.[81] Prior to adoption, notice shall be provided and a public hearing shall be held.[82] Any resident, sewer customer, or citizen of the Commonwealth that is affected by the proposed commission may submit written or oral comments and objections to the member entity.[83] The commission shall be adopted if, after the hearing and consideration of all comments, it is found that: (1) the establishment of the commission is in furtherance of the public health, convenience, and benefit to the customers of the entities proposing its creation; and (2) the establishment of the commission can

76. *Id.* § 65.8901(1).
77. *Id.* § 65.8901(1)(a).
78. *Id.* § 65.8903(2).
79. *Id.* § 65.8903(4).
80. *Id.*
81. *Id.* § 65.8905(1)–(3).
82. *Id.* § 65.8905(4).
83. *Id.*

reasonably be expected to result in the improvement of the environment over that which would occur in the absence of such a commission.[84]

### B. *Carbon Dioxide Transmission Pipelines*

On March 16, 2011, Governor Beshear signed SB 50, which amended Chapter 154, subchapter 27 of the Kentucky Revised Statutes, relating to the capture and transportation of carbon dioxide ("$CO_2$"), known as the Incentives for Energy Independence Act.[85] The Act declared, in relevant part, that the routine, construction, maintenance, and operation of $CO_2$ transmission pipelines are "a public use essential to the fulfillment of the purposes of [Chapter 154 on Development]."[86] If a company has obtained a construction certificate from the Kentucky State Board on Electric Generation and Siting to construct a $CO_2$ transmission pipeline and, after a good faith effort, is unable to contract or agree with an owner, the company may use eminent domain proceedings to condemn the lands and material as necessary for the following purposes:

> (a) Constructing, maintaining, utilizing, operating, and gaining access to a carbon dioxide transmission pipeline and all necessary machinery, equipment, pumping stations, appliances, and fixtures for use in connection with a carbon dioxide transmission pipeline; and
> (b) Obtaining all necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove a carbon dioxide transmission pipeline and all of its component parts.[87]

"Carbon dioxide transmission pipeline" was further defined to be "the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications."[88] Also, $CO_2$ transmission pipelines meeting the investment requirements of KRS § 154.27-020 were added to the definition of "eligible project."[89]

SB 50 additionally resulted in amendments to Chapter 278 for the purpose of enacting a system to regulate $CO_2$ transmission pipelines.[90] In order to commence construction of a carbon dioxide transmission line, the person must obtain a construction certificate from the Kentucky State Board on Electric Generation and Transmission Siting,

84. *Id.* § 65.8905(5).
85. *See generally* KY. REV. STAT. ANN. §§ 154.27-010 to -100 (LexisNexis Supp. 2011).
86. *Id.* § 154.27-100(4).
87. *Id.* § 154.27-100(2)–(3).
88. *Id.* § 154.27-010(11).
89. *Id.* § 154.27-010(16)(d).
90. KY. REV. STAT. ANN. §§ 278.700, 278.714 (LexisNexis Supp. 2011).

who oversees their construction and use.[91] Within ninety days of receipt of an application for a certificate, or 120 days if a local public information meeting is held, the Board shall grant or deny the certificate, in whole or in part, by majority vote.[92] In order to grant a certificate, the Board must determine that the proposed route of the pipeline minimizes "significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements."[93] The Board may also consider any interstate benefits which may be achieved.[94] The Board has discretion to deny an application, or condition approval on relocation, if it determines that the line will result in "significant degradation of scenic factors" or that the line will be in violation of applicable legal requirements.[95]

### C. *Environmental Protection*

On March 16, 2011, Governor Beshear signed SB 70, which amended Kentucky Revised Statutes Chapter 224, subchapter 1, section 530, pertaining to the screening levels of remediation, tiered remediation management, and administrative regulations.[96] It requires the use of Regional Screening Level (RSL) Table for U.S. EPA Region 3 instead of Region 9.[97] It also requires use of guidance in the Risk-Based Concentration Table User's Guide instead of the Region 9 Preliminary Remediation Goals[98] and gives the cabinet authority to promulgate administrative regulations which adopt and incorporate updated versions of the RSL Table.[99]

91. *Id.* § 278.714.
92. *Id.* § 278.714(7).
93. *Id.*
94. *Id.*
95. *Id.*
96. KY. REV. STAT. ANN. § 224.01-530 (LexisNexis Supp. 2011).
97. *Id.* § 224.01-530(1).
98. *Id.*
99. *Id.* § 224.01-530(5).


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