

Kentucky Lawmakers Approve Adjustments To Waste Rules

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FRANKFORT, KY.—During a busy and productive 2017 Kentucky Legislature, which concluded March 30, a new Republican supermajority in both chambers easily passed the only significant piece of legislation related to the oil and natural gas industry.

According to published reports, the Capitol was the site of an active legislative session that largely avoided bills aimed at the oil and gas industry. However, one development significant to the industry dealt with passage of SB 248, a bill to amend the state's definition of radioactive waste, exempt drill cuttings from regulation as technologically enhanced radioactive material and expand the authority of the state's radiation regulation agency to include radioactive oil field wastes. According to the state's legislative services department, Governor Matt Bevin signed the bill in March.

Other than SB 248, which the Kentucky Oil & Gas Association supported, there were no significant bills aimed at the state's oil and natural gas industry says Bill Barr, chairman of KOGA's Government Affairs Committee.

Background

SB 248 originates in legislation from last year. Following the 2016 passage of HB 563, which calls for an update of Kentucky's regulations of oil and gas solid waste classified as containing naturally occurring radioactive materials (NORM), Barr says, the state Energy and Environment Cabinet and the Health and Family Services Cabinet convened a work group to host a series of stakeholder meetings, examine concerns and recommend revision. Barr, the managing partner at Black-Ridge Resource Partners, in Lexington, is an industry representative on the work group, which provided an interim report to the Kentucky Legislative Research Commission in November.

Under terms of a 1984 compact with Illinois, neither state allows import or disposal of NORM from other states. Initially, the compact developed a regional management plan that both classified NORM as falling within the federal definition of the Low-Level Radioactive Waste Policy Act of 1980, and also provided a definition of technologically enhanced radioactive materials (TENORM).

According to the work group, oil and gas waste material from outside the state was disposed in landfills in Estill and Greenup counties in the summer of 2015. Later published reports indicated the material originated in Ohio and West Virginia. As a result of the work group's efforts, it was determined that a number of definitional changes and specific amendments were needed to facilitate the group's work, which yielded SB 248, Barr explains. The work group also has called for regulations to improve NORM and TENORM management according to exposure risk and for risk to be managed at below health-based dose levels. It recommended exemption for produced and flowback water disposed in wells permitted for underground injection control. It also recommended exempting materials and surface soils tested at or below 5 picocuries a gram (pCi/g) as de minimis health risk.

Specific limits and requirements continued to evolve, as subsequent work group meetings revised the initial parameters, Barr notes. "There was some disagreement over the disposal limits and we spent several meetings working that out," Barr describes.

The result is a final recommendation that the test limits for nonpermitted disposal be set between 5 pCi/g and 100 pCi/g, increased from the initially recommended limit of 50 pCi/g, he explains. Disposal by permit is recommended for materials that test at between 100 pCi/g and 200 pCi/g, with the upper limit reduced from 238 pCi/g, he continues, adding that the recommendations are for measuring Radium 226 and 228.

"The group was able to compromise on the limit changes because the tests are for the merged Radium counts," Barr observed.

Work group members will seek approval from their respective industries and interest groups, he explains, after which draft administrative regulations that embody the recommendations will be issued by the Energy and Environment and the Health and Family Services cabinets, and are subject to the normal rule-making process, including a public comment period and review by the legislature's Administrative Review Committee.

"Unless something unexpected comes up, we ought to see the regulations promulgated by this summer," Barr concludes. □

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