WEST VIRGINIA CODE CHAPTER 22 ARTICLE 10

WV Legislature

§22-10-1. Short title.

This article may be cited as Abandoned Well Act.

WV Legislature

§22-10-2. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds and declares that:

(1) Oil and gas have been continuously produced in West Virginia for over one hundred years, during which time operators of wells have been required by the laws of this state to plug wells upon cessation of use;

(2) The plugging requirements for certain older oil and gas and other wells may not have been sufficient to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, nor to allow for enhanced recovery of oil, gas or other mineral resources of this state;

(3) Many wells may exist in West Virginia which are abandoned and either not plugged or not properly plugged in a manner to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, to allow for enhanced recovery of oil, gas and other mineral resources, and generally to protect the environment and mineral resources of this state, as aforesaid;

(4) Requirements for financial responsibility to assure plugging of abandoned wells have not been required in this state for older wells, and adequate financial responsibility should be established with respect to all wells;

(5) Programs and policies should be implemented to foster, encourage and promote through the fullest practical means the proper plugging of abandoned wells to protect the environment and mineral resources of this state;

(6) Criteria should be established with respect to priorities for the expenditure of moneys available for plugging abandoned wells and identifying those abandoned wells which, as a matter of public policy, should be plugged first; and

(7) The plugging of many abandoned wells may be accomplished through the establishment of rights and procedures allowing interested persons to apply for a permit to plug an abandoned well.

(b) The Legislature hereby declares that it is in the public interest and it is the public policy of this state, to foster, encourage and promote the proper plugging of all wells at the time of their abandonment to protect the environment and mineral resources of this state.

WVLegislature

§22-10-3. Definitions.

Unless the context in which it is used clearly requires a different meaning, as used in this article:

(a) "Abandoned well" means any well which is required to be plugged under the provisions of section nineteen, article six of this chapter and rules promulgated pursuant thereto.

(b) "Director" means for the purpose of this article, the director of the Division of Environmental Protection as established in article one of this chapter or such other person to whom the director may delegate authority or duties pursuant to sections six or eight, article one of this chapter.

(c) "Interested party" means, for the purpose of this article, any owner, operator or lessee of the surface, oil, gas, water, coal or other mineral resource under, on, adjacent or in close proximity to any lands upon which an abandoned well exists, and whose lands, rights or interests are or might be affected by such abandoned well.

WV Legislature

§22-10-4. Financial responsibility -- Applicability.

(a) Operators of all wells, not otherwise required to demonstrate financial responsibility through bonding or otherwise in accordance with the provisions of article six of this chapter, shall, no later than July 1, 1993, demonstrate financial responsibility in accordance with the methods and in the amounts prescribed by this article.

(b) If the operator demonstrates to the satisfaction of the director that an unjust hardship to an operator will occur as a result of the financial responsibility requirements of this article:

(1) The director may suspend such financial responsibility requirements to a date no later than July 1, 1995; or

(2) The director may authorize an operator to demonstrate such financial responsibility by supplying twenty percent of any required amount by no later than July 1, 1994; forty percent no later than July 1, 1995; sixty percent no later than July 1, 1996; eighty percent by July 1, 1997; and one hundred percent by July 1, 1998.

(c) The operator making a demonstration of financial responsibility pursuant to this section shall provide the director with information sufficient to establish the location and identification of the well, any well completion, recompletion and reworking records which may exist and such other information as the director may reasonably require.

WV Legislature

§22-10-5. Financial responsibility -- Amount.

The financial responsibility requirements applicable to all wells shall be as set forth in section twenty-six, article six of this chapter, except that the amount of financial responsibility through bonding or otherwise, as provided for in said section, for an individual well shall be in the amount of $5,000. In lieu of separate, single well bonds, an operator may either furnish a blanket bond in the sum of $50,000 in accordance with the provisions of subsection (c) of section twenty-six, article six of this chapter, or if the operator has previously provided a blanket bond in the sum of $50,000 which remains in effect, the operator may cover wells subject to this article by such existing blanket bond.

WV Legislature

§22-10-6. Establishment of priorities for plugging expenditures.

(a) The director shall promulgate legislative rules establishing a priority system by which available funds from the Oil and Gas Reclamation Fund, established pursuant to §22-6-29 of this code, will be expended to plug abandoned wells. The rules shall, at a minimum, establish three primary classifications to be as follows:

(1) Wells which are an immediate threat to the environment or which may hinder or impede the development of mineral resources of this state so as to require immediate plugging;

(2) Wells which are not an immediate threat to the environment or which do not hinder or impede the development of mineral resources of this state, but which should be plugged consistent with available resources; and

(3) Wells which are not a threat to the environment and which do not hinder or impede the development of mineral resources of this state and for which plugging may be deferred for an indefinite period.

(b) The classifications shall, among other things, take into consideration the following factors, as appropriate:

(1) The age of the well;

(2) The length of time the well has been abandoned;

(3) The casing remaining in the well;

(4) The presence of any leaks either at the surface or underground;

(5) The possibility or existence of groundwater contamination;

(6) Whether the well is located in an area to be developed for enhanced recovery;

(7) Whether the well hinders or impedes mineral development; and

(8) Whether the well is located in close proximity to population.

(c) Notwithstanding the other provisions of this section, the bond posted for the well shall first be used to plug the well and mitigate environmental issues related to oil and gas development on the land where the well is located if:

(1) The bond is forfeited as a result of failure to plug the abandoned well, repair the well that is causing immediate threat to the environment, or which hinders or impedes the development of mineral resources of this state; or

(2) The well operator was cited for and then failed to correct an immediate threat to the environment or hinderance or impediment to the development of mineral resources of this

WV Legislature

state; or

(3) The operator failed to reclaim the surface disturbance causing immediate threat to the environment or which hinders or impedes the development of mineral resources of this state.

WV Legislature

§22-10-7. Right of interested person to plug, replug and reclaim abandoned wells.

(a) Upon twenty days' advance written notice, it shall be lawful for any interested person, the operator or the director to enter upon the premises where any abandoned well is situated and properly plug or replug such abandoned well, and to reclaim any area disturbed by such plugging or replugging in the manner required by article six of this chapter. Such notice shall be served by certified mail, returned receipt requested, or such other manner as is sufficient for service of process in a civil action, upon any owner of the surface of the land upon which such abandoned well exists, upon any oil and gas lessee of record with the director and upon any owner or operator of such abandoned well of record with the director, or in the event there is no such lessee, owner or operator of record with the director, by posting such notice in a conspicuous place at or near such abandoned well. The notice given the surface owner shall include a statement advising the surface owner of the right to repairs or damages as provided in this section and the potential right to take any casing, equipment or other salvage. Such notice shall be on forms approved by the director.

(b) Any interested person who plugs a well pursuant to the provisions of this section shall, to the extent damage or disturbance results from such plugging, either repair the damage or disturbance or compensate the surface owner for (i) the reasonable cost of repairing or replacing any water well, (ii) the reasonable value of any crops destroyed, damaged or prevented from reaching market, (iii) the reasonable cost of repair to personal property up to the value of the replacement value of personal property of like age, wear and quality, (iv) lost income or expense incurred, and (v) reasonable costs to reclaim or repair real property including roads.

(c) The interested person who is plugging the well pursuant to the provisions of this section, may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by including notice of such election in the written notice mandated by subsection (a) of this section. Should such interested person who is plugging the well not give such notice of election, the surface owner may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by giving written notice of such election to the interested person who is plugging the well at least ten days in advance of such plugging. In the event such notice is given, such interested person who is plugging the well may leave such casing, equipment or salvage at a location which will not adversely affect any reclamation of a disturbed area. In the event the surface owner does not give notice of an election to take such casing, equipment or salvage as provided herein, such interested person who plugs the well shall properly dispose thereof. Nothing in this subsection shall be construed to require or create a duty upon such interested person who plugs the well to protect or pull casing or otherwise take any action or incur any expense to retrieve or protect any casing, equipment or salvageable material: Provided, That nothing contained in this section may be construed to relieve the interested person from the responsibility to perform in accordance with the requirements of this article, article six of this chapter, or any condition of the permit.

(d) Prior to releasing any bond which is obtained in connection with plugging or replugging

an abandoned well under the provisions of this section, the director shall obtain from the interested person who has obtained the bond a copy of a letter that such interested person has sent to the surface owner advising that reclamation has been completed.

(e) Where an interested person who intends to plug an abandoned well pursuant to this section is unable to obtain a bond in the full amount required by section twenty-six, article six of this chapter, the director may authorize a bond in a lesser amount; which lesser amount shall be equal or greater than the estimated cost of reclaiming the surface areas disturbed by the plugging operation: Provided, That an owner or operator of a well shall comply with the financial responsibility provisions of section five of this article and section twenty-six, article six of this chapter.

(f) In the event the owner or operator of a well fails or has failed to plug a well in accordance with laws and rules in effect at the time the well is or was first subject to plugging requirements, any interested person who plugs or replugs such well pursuant to the provisions of this section may recover from the owner or operator of such well all reasonable costs incidental to such plugging or replugging, including any compensation provided for in this section. In the event funds from the oil and gas reclamation fund established pursuant to section twenty-nine, article six of this chapter are used to plug or replug such well, the director shall be entitled to recover from the owner or operator of such well any amounts so expended from the fund. Any amounts so recovered by the director shall be deposited in said fund.

WV Legislature

§22-10-8. Arbitration; fees and costs.

(a) If the interested person who plugs a well and the surface owner are unable to agree as to the adequacy of the repairs performed or the amount of compensation to which the surface owner may be entitled, either party upon written notice to the other may elect to have such issue finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

(b) The adequacy of the repairs or compensation to which the surface owner may be entitled shall, if such election is made, be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the party electing to arbitrate in such person's notice of election; the second arbitrator shall be chosen by the other party within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators are hereby empowered to and shall forthwith submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and not be appointed as arbitrators: Any person who is personally interested in the land on which the plugging is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, such land or the oil and gas development thereof. No person shall be deemed interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation wherein the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the required repairs or the amount of compensation to be paid to the surface owner. However, no award requiring repairs or compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of such party's own arbitrator and one half of the compensation of the third arbitrator, and such party's own costs.

WV Legislature

§22-10-9. Civil penalties.

(a) Any person who fails to plug an abandoned well within thirty days, or upon a showing of good cause, within a longer period as determined by the director not to exceed one hundred eighty days, from the date such plugging is ordered by the director, shall be liable for a civil penalty of $25,000 which penalty shall be recovered in a civil action in the circuit court wherein the abandoned well is located.

(b) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section shall be deposited into the oil and gas reclamation fund established pursuant to section twenty-nine, article six of this chapter.

WV Legislature

§22-10-10. Rulemaking; procedure; judicial review.

(a) The director shall have the power and authority to promulgate legislative rules, procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code in order to carry out and implement the provisions of this article.

(b) Any hearings or proceedings before the director on any matter other than rule making shall be conducted and heard by the director or a representative designated by the director and shall be in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(c) Any person having an interest which is or may be adversely affected, who is aggrieved by an order of the director issued pursuant to this article, or by the issuance or denial of a permit pursuant to this article or by the permit's terms or conditions, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

WV Legislature

§22-10-11. Existing rights and remedies preserved.

(a) It is the purpose of this article to provide additional and cumulative remedies to address abandoned wells in this state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers or persons in the exercise of their rights to suppress nuisance or to abate any pollution now or hereafter existing, or to recover damages.

(b) An order of the director, the effect of which is to find that an abandoned well exists, or in ordering an abandoned well to be plugged, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the State of West Virginia.

(c) Nothing contained in this article shall be construed to place any duty or responsibility on the landowner, well owner or operator or lessee to plug a well in addition to those set forth in article six of this chapter.

WV Legislature

§22-10-12. Provisions of article supplemental.

The provisions of this article shall be in addition to and supplement all other provisions of article eight of this chapter and rights with respect to plugging or replugging wells. Nothing in this article shall be construed to eliminate the permit requirement for plugging and replugging wells.

WV Legislature