WEST VIRGINIA CODE: §22-21-13

§22-21-13. Review board hearing; findings; order.

(a) If comment or objection is filed under section ten or eleven of this article, the chief shall forthwith provide to the chairman of the coalbed methane review board a copy of any such objection or comment, together with the application for a permit for the coalbed methane well in question, the plat filed therewith and such other information accompanying the permit as may relate to the comment or grounds for the objection.

(b) The review board shall forthwith schedule a hearing for the purpose of considering such objection or comment. Notice shall be given fifteen days in advance of the hearing to any person filing comment or objection, and to any person to whom notice of the application required, and to any applicant, and the review board shall hold such hearing within thirty days after the deadline for filing objection or comment. At such hearing the review board shall consider the matters raised in any objection or comment, including surface topography and use, and with respect to the ability to mine any affected coal seam safely and the protection of any such seam for future mining shall consider the following:

(1) Whether the drilling location is above or in close proximity to any mine opening, shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, any abandoned, operating coal mine or any coal mine already surveyed and platted but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing or planned pillar of coal, taking into consideration the surface topography;

(3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal;

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal or coalbed methane;

(5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article three of this chapter;

(6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

(7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and coalbed methane;

WV Legislature

(9) The practicality of locating the well on a uniform pattern with other wells;

(10) The surface topography and use;

(11) Whether any stimulation of the coal seam will render such seam or any other workable coal seams unmineable or unsafe for mining; and

(12) Whether the director of the office of miners' health, safety and training has submitted recommendations as to the safety of any proposed stimulation. In considering any recommendations made by the director of the office of miners' health, safety and training, the board shall incorporate such recommendations in its findings, conclusions and order unless the board determines that there is clear and convincing evidence on the record supporting a finding, conclusion or order inconsistent with such recommendations.

(c) In weighing the evidence presented to the board the applicant shall have the burden of proving by clear and convincing evidence that stimulation of a workable coal seam of twenty-eight inches or more in thickness will not render such seam or any other workable coal seam of twenty-eight inches or more in thickness unmineable or unsafe for mining.

(d) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon the ability to mine any affected coal seam safely and the protection of any coal seam for safe future mining, shall enter a written order containing findings of fact and conclusions which address any relevant considerations in subsection (b) of this section and based thereon shall issue and file with the chief a written order directing him to:

(1) Refuse a drilling permit; or

(2) Issue a drilling permit for the proposed drilling location; or

(3) Issue a drilling permit for an alternate drilling location different from that requested by the applicant; or

(4) Issue a drilling permit either for the proposed drilling location or for an alternative drilling location different from that requested by the applicant, provided such alternate location is covered by the agreement and consent required by section seven of this article, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit; or

(5) Issue a permit authorizing the applicant to stimulate the well in the absence of consent of the affected coal operators or owners of workable coal seams of twenty-eight inches or more in thickness as described in subsection (a) of section seven of this article, as proposed or as modified by the order of the board. Such order shall further provide for the applicant to furnish evidence of financial security in one of the following forms: (a) A corporate surety bond having on it a company authorized to do business in this state as surety; (b) bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest

WV Legislature

thereof; (c) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia if such other state, territory or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (d) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this state issued pursuant to law and payable from ad valorem taxes levied on all taxable property located herein, that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt, evidenced by its bonds; (e) revenue bonds issued by this state or any agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (f) revenue bonds issued by a municipality in this state for the acquisition, construction, improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (g) revenue bonds issued by a public service board of a public service district in this state for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement of payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (h) revenue bonds issued by a board of trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; and (i) bonds issued by a federal land bank or home owners' loan corporation; (j) cash; or (k) any combination of the above. The operator of the well shall be entitled to all interest and income earned on the collateral securities provided pursuant to the order. Such security given shall be placed in an escrow account. The operator providing security shall be entitled from time to time to receive, upon written order of the board, the whole or any portion of such securities upon depositing in lieu thereof cash equal to the approved securities of the classes herein specified.

The amount of such financial security shall be set by order of the board but shall in no event exceed an amount of $50,000. In setting the amount of financial security, the board shall consider the total amount of coal which could be at risk of economic harm, demonstrated experience in the locale and seams of the proposed stimulation, the probability of damages to the seam, and the likelihood of commercial recovery within thirty years of the date of

stimulation.

Such financial security shall remain in force until two years after the affected coal is mined or for a period of thirty years after stimulation of the coal seam or until final resolution of any action timely instituted to collect the bond proceeds, whichever first occurs.

Any coal owner or operator may assert a claim to the posted financial security by instituting an action therefor in the circuit court of the county where the well is located or where the damages occurred.

Upon receipt of such review board order, the chief shall promptly undertake the action directed by the review board, provided that all other provisions of this article have been complied with. All permits issued by the chief pursuant to this section shall be effective ten days after issuance unless the review board orders the chief to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the chief shall indicate the approved drilling location on the plat filed with the application for a permit and shall number and keep an index of and docket each plat, the name of the well operator, the names and addresses of all persons notified, the dates of conferences, hearings and all other actions taken by the chief and the review board. The chief shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the chief, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the chief shall be open to inspection by the public.

(e) Notwithstanding any finding or determination made by the board, in the event a workable coal seam twenty-eight inches or more in thickness is stimulated absent the consent of the coal owner or operator, the applicant and well operator shall be liable in tort without proof of negligence for any damage to such coal seam stimulated or any other workable coal seam twenty-eight inches or more in thickness within seven hundred fifty horizontal feet or one hundred vertical feet of the stimulation and for damages to any mining equipment proximately caused by such stimulation. Such applicant and well operator shall indemnify and hold the coal owner and coal operator harmless against any liability for injury, death or damage to property proximately caused by the stimulation.

WV Legislature