
WEST VIRGINIA CODE CHAPTER 22
ARTICLE 21

WV Legislature

§22-21-1. Declaration of public policy; legislative findings.

(a) The Legislature hereby declares and finds that the venting of coalbed methane from mine areas and degasification of coal seams has been and continues to be approved by the state for the purpose of ensuring the safe recovery of coal; that the value of coal is far greater than the value of coalbed methane and any development of the coalbed methane should be undertaken in such a way as to protect and preserve coal for future safe mining and maximum recovery of the coal; that subject to the above declarations and findings, commercial recovery and marketing of coalbed methane should in some cases be facilitated because the energy needs of this state and the United States indicate that the fullest practical recovery of both coal and coalbed methane should be encouraged; that the Energy Policy Act of 1992 was enacted in part to encourage coalbed methane development and the State of West Virginia should enact legislation which carries out the purposes of said act; that in order to encourage and ensure the fullest practical recovery of coal and coalbed methane in this state and to further ensure the safe recovery of both natural resources, it is in the public interest to enact this article authorizing coalbed methane well permits, regulating the design of coalbed methane wells and recovery techniques, authorizing coalbed methane well units and pooling of interests therein to provide all coalbed methane operators and coalbed methane owners with an opportunity to recover their just and equitable share of production.

(b) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Preserve coal seams for future safe mining; facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state, and maintain the ability and absolute right of coal operators at all times to vent coalbed methane from mine areas;

(2) Foster, encourage and promote the commercial development of this state's coalbed methane by establishing procedures for issuing permits and forming drilling units for coalbed methane wells without adversely affecting the safety of mining or the mineability of coal seams;

(3) Safeguard, protect and enforce the correlative rights of coalbed methane well operators and coalbed methane owners in a pool of coalbed methane to the end that each such operator and owner may obtain his or her just and equitable share of production from coalbed methane recovered and marketed under this article;

(4) Safeguard and protect the mineability of coal during the removal of coalbed methane, as permitted under this article;

(5) Create a state permitting procedure and authority to provide for and facilitate coalbed methane development as encouraged by the Energy Policy Act of 1992; and

(6) Seek the deletion of the State of West Virginia from the list of affected states by the secretary of the United States department of the interior as provided for in the Energy Policy

Act of 1992.

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§22-21-2. Definitions.

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

(a) "Review board" means the West Virginia coalbed methane review board which shall be comprised of the members of the West Virginia shallow gas well review board provided for in article eight, chapter twenty-two-c of this code, the state geologist, a representative of the United Mine Workers of America, an employee of the gas industry, and the director of the office of miners' health, safety and training, and the chairman of the review board shall be the chairman of the West Virginia shallow gas review board;

(b) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable, and the noncoal roof and floor of said seam of coal;

(c) "Coalbed methane" means gas which can be produced from a coal seam, the rock or other strata in communication with a coal seam, a mined-out area or a gob well;

(d) "Coalbed methane owner" means any owner of coalbed methane;

(e) "Coalbed methane well" means any hole or well sunk, drilled, bored or dug into the earth for the production of coalbed methane for consumption or sale, including a gob well. The term "well" shall mean a coalbed methane well unless the context indicates otherwise. The term "coalbed methane well" does not include any shaft, hole or well sunk, drilled, bored or dug into the earth for core drilling, production of coal or water, venting gas from a mine area, or degasification of a coal seam, or any coalbed methane well extending from the surface into, but not below, a coal seam being mined after such well or its horizontal extension has been plugged in accordance with section twenty-three of this article;

(f) "Coalbed methane well operator" or "well operator" means any person who has the right to operate or does operate a coalbed methane well;

(g) "Coal operator" means any person who proposes to or does operate a coal mine;

(h) "Coal owner" means any person who owns or leases a coal seam;

(i) "Chief" means the chief of the office of oil and gas of the Division of Environmental Protection provided for in section eight, article one of this chapter;

(j) "Director" means the director of the Division of Environmental Protection;

(k) "Division" means the Division of Environmental Protection;

(l) "Gob well" means a well drilled or vent hole converted to a well pursuant to this article which produces or is capable of producing coalbed methane or other natural gas from a distressed zone created above and below a mined-out coal seam by any prior full seam extraction of the coal;

(m) "Mine" or "mine areas," including the sub-definitions under "mine areas," shall have the same definitions as are provided in section two, article one, chapter twenty-two-a of this code;

(n) "Office" means office of oil and gas provided for in section seven, article one of this chapter;

(o) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary, other representative of any kind, any recognized legal entity, or political subdivision or agency thereof;

(p) "Stimulate" means any action taken to increase the natural flow of coalbed methane or the inherent productivity of a coalbed methane well, including, but not limited to, fracturing, shooting, acidizing or water flooding, but excluding cleaning out, bailing or workover operations;

(q) "Waste" means: (i) Physical waste as the term is generally understood in the gas industry and as provided for in article six of this chapter, but giving special consideration to coal mining operations and the safe recovery of coal; (ii) the locating, drilling, equipping, operating, producing or transporting coalbed methane in a manner that causes or tends to cause a substantial reduction in the quantity of coalbed methane recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of coalbed methane; (iii) the drilling of more wells than are reasonably required to recover efficiently and economically the maximum amount of coalbed methane from a pool; or (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of reservoir pressure. Waste does not include coalbed methane vented or released from any mine area, the degasification of a coal seam for the purpose of mining coal, the plugging of coalbed methane wells for the purpose of mining coal, coalbed methane vented or flared from a coalbed methane well, after completion, for the purpose of evaluating its economic viability, or the conversion of coalbed methane wells to vent holes for the purpose of mining coal;

(r) "Workable coalbed" or "workable coal seam" means any seam of coal twenty inches or more in thickness, or any seam of less thickness which is being commercially mined or can be shown to be capable of being commercially mined;

(s) "Secretary" means the Secretary of the Department of Environmental Protection.

§22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.

(a) The provisions of this article apply to: (1) All lands in this state under which a coalbed is located, including any lands owned or administered by the state or any agency or subdivision thereof; and (2) any coalbed methane well.

(b) This article does not apply to or affect: (1) Any well otherwise permitted, approved or regulated under articles six, seven, eight, nine or ten of this chapter or article eight, chapter twenty-two-c of this code; (2) any ventilation fan, vent hole, mining apparatus, or other facility utilized solely for the purpose of venting any mine or mine area; or (3) the ventilation of any mine or mine area or degasification of any coal seam for the mining of coal.

(c) This article does not apply to or affect subsurface boreholes drilled from the mine face of an underground mine, except that the provisions of sections fifteen, sixteen, seventeen, eighteen and nineteen shall apply.

(d) To the extent that coalbed methane wells are similar to wells, as defined in section one, article six of this chapter, and the production of coalbed methane is similar to the production of natural gas, coalbed methane wells shall be treated as wells and coalbed methane treated as natural gas and subject to the following sections of article six of this chapter:

(1) The provisions of section three pertaining to the findings and orders of inspectors concerning violations, determination of reasonable time for abatement, extensions of time for abatement, special inspections, notice of findings and orders;

(2) The provisions of section four providing for the review of findings and orders by the chief, special inspection, annulment, revision of order and notice;

(3) The provisions of section five providing for the requirements of findings, orders and notices; posting of findings and orders; and judicial review of final orders of the chief;

(4) The provisions of section twenty-one providing for protective devices--installation of freshwater casings;

(5) The provisions of section twenty-two providing for a well log to be filed, contents, and authority to promulgate regulations. In addition to the requirements of such section, the operator shall certify that the well was drilled and completed as shown on the well plat required for a coalbed methane well, or in the alternative, file a revised well plat showing the actual location of the well and the coal seams in which the well is completed for production. Such log and certificate shall be served on all coal owners and operators who must be named in the permit application under section six of this article;

(6) The provisions of section twenty-eight providing for supervision by the chief over drilling and reclamation operations, complaints, hearings and appeals;

- (7) The provisions of section twenty-nine providing for special reclamation funds and fees;
- (8) The provisions of section thirty providing for reclamation requirements;
- (9) The provisions of section thirty-one providing for preventing waste of gas, plan of operation required for wasting gas in process of producing oil and rejection thereof;
- (10) The provisions of section thirty-two providing for the right of adjacent owner or operator to prevent waste of gas and recovery of costs;
- (11) The provisions of section thirty-three providing for restraining waste;
- (12) The provisions of section thirty-four providing for offenses and penalties;
- (13) The provisions of section thirty-five providing for civil action for contamination or deprivation of freshwater source or supply and presumption;
- (14) The provisions of section thirty-six providing for declaration of notice by owners and lessees of coal seams and setting out the form of such declaration; and
- (15) The provisions of section thirty-nine providing for injunctive relief.

In addition to the foregoing and subject to the same qualifications, the provisions of article ten of this chapter shall apply to coalbed methane wells. Any well which is abandoned or presumed to be abandoned under the provisions of this article shall be treated as an abandoned well under said article ten. In addition, the provisions of article seven of this chapter shall apply to permits issued pursuant to this article.

§22-21-4. Chief; powers and duties generally.

(a) The chief of the office of oil and gas shall have the duty of issuing permits and otherwise supervising the execution and enforcement of the provisions of this article, all subject to the review and approval of the director.

(b) The chief of the office of oil and gas is authorized to enact rules necessary to effectuate the purposes of this article, subject to the review and approval by the director.

(c) In addition to all other powers and duties conferred upon the chief, the chief shall have the power and duty to:

(1) Perform all duties which are expressly imposed upon him by the provisions of this article, as well as duties assigned to him or her by the director;

(2) Perform all duties as the permit issuing authority for the state in all matters pertaining to the exploration, development, production and recovery of coalbed methane in accordance with the provisions of this article;

(3) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation by establishing programs relating to the exploration, development, production and recovery of coalbed methane, which programs are assumable by the state;

(4) Visit and inspect any coalbed methane well or well site and call for the assistance of any oil and gas inspectors or other employees of the office of oil and gas in the enforcement of the provisions of this article;

(5) Collect the permit application fee for the drilling of a coalbed methane well;

(6) Collect the permit application fee for a drilling unit.

§22-21-5. Duties of the Coalbed Methane Review Board; meetings; notice, powers and duties generally.

(a) The board shall meet and hold conferences and hearings at times and places designated by the chairman. The chairman may call a meeting of the board at any time. The chairman shall call a meeting of the board: (1) Upon receipt from the chief of a completed application for a permit to establish one or more coalbed methane gas drilling units pursuant to this article; (2) upon receipt from the chief of a request pursuant to section seven of this article or comments or objections pursuant to sections ten and eleven of this article; or (3) within twenty days upon the written request by another member of the board. Notice of all meetings shall be given to each member of the board by the chairman at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of this section, the chairman shall also notify the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of section ten or eleven of this article.

(c) A majority of the members of the board constitute a quorum for the transaction of any business. A majority of the members of the board is required to determine any issue brought before it.

(d) The board shall execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the board has jurisdiction and authority over all persons and property necessary therefor: Provided, That the provisions of this article do not grant to the board authority or power to fix prices of coalbed methane gas.

(e) Within eighteen months of the effective date of this article, the board shall initiate rule-making proceedings to investigate the feasibility of establishing blanket bonds for financial security in addition to the provisions for bonds for financial security under section thirteen of this article.

(f) The board may:

(1) Take evidence and issue orders concerning applications for drilling permits and coalbed methane gas drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, and enforce reasonable rules necessary to govern the practice and procedure before the board;

(3) Propose legislative rules pursuant to the provisions of chapter twenty-nine-a of this code necessary to implement the powers and duties provided the board under this article, notwithstanding the provisions of subsection (b), section four of this article;

- (4) Make relevant investigations of records and facilities it considers proper; and
- (5) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents in its own name or at the request of any party pursuant to article five, chapter twenty-nine-a of this code.

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§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

(a) It is unlawful for any person to commence, operate, deepen or stimulate any coalbed methane well, to conduct any horizontal drilling of a well commenced from the surface for the purpose of commercial production of coalbed methane or to convert any existing well, vent hole or other hole to a coalbed methane well, including in any case site preparation work which involves any disturbance of land, without first securing from the chief a permit pursuant to this article.

(b) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of: (i) The well operator; (ii) the agent required to be designated under subsection (e) of this section; and (iii) every person or entity whom the applicant must notify under section nine of this article;

(2) The name and address of each coal operator of record and each coal owner of record or providing a record declaration of notice pursuant to section thirty-six, article six of this chapter of any coal seam which is: (i) To be penetrated by a proposed well; (ii) within seven hundred fifty horizontal feet of any portion of the proposed well bore; or (iii) within one hundred vertical feet of the designated coal seams to be stimulated in the proposed well, except that in the case of an application to convert a ventilation hole to a gob well, the name and address only of such owner or operator of the seams to be penetrated by a proposed well shall be necessary;

(3) The well name or such other identification as the chief may require;

(4) The approximate depth to which the well is to be drilled, deepened or converted, the coal seams (stating the depth and thickness of each seam) in which the well will be completed for production and any other coal seams (including the depth and thickness of each seam) which will be penetrated by the well;

(5) A description of any means to be used to stimulate the well;

(6) If the proposed well will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(7) If the proposed operation is to convert an existing well, as defined in section one, article six of this chapter, or to convert a vertical ventilation hole to a coalbed methane well, all information required by this section, all formations from which production is anticipated and any plans to plug any portion of the well;

(8) Except for a gob well or vent hole proposed to be converted to a well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan

and design for the well which will protect all workable coal seams which will be penetrated by the well;

(9) If the proposed operations will include horizontal drilling of a well commenced on the surface, a description of such operations, including both the vertical and horizontal alignment and extent of the well from the surface to total depth;

(10) Any other relevant information which the chief may require by rule.

(c) Each application for a coalbed methane well permit shall be accompanied by the following:

(1) The applicable bond prescribed by section eight of this article;

(2) A permit application fee of \$650;

(3) The erosion and sediment control plan required under subsection (d) of this section;

(4) The consent and agreement of the coal owner as required by section seven of this article and, if applicable, section twenty of this article;

(5) A plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the drill site is located, the name of the surface owner of the drill site tract, the acreage of the same, the names of the surface owners of adjacent tracts, the names of all coal owners underlying the drill site tract, the proposed or actual location of the well determined by a survey, the courses and distances of such location from two permanent points or landmarks on said tract, the location of any other existing or permitted coalbed methane well or any oil or gas well located within two thousand five hundred feet of the drill site, the number to be given the coalbed methane well, the proposed date for completion of drilling, the proposed date for any stimulation of the well and, if horizontal drilling of a well commenced on the surface is proposed, the vertical and horizontal alignment and extent of the well;

(6) A certificate by the applicant that the notice requirements of section nine of this article have been satisfied by the applicant. Such certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing.

(d) An erosion and sediment control plan shall accompany each application for a permit. Such plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia erosion and sediment control manual as adopted and, from time to time, amended by the Office of Oil and Gas in consultation with the several soil conservation districts pursuant to the control program established in this state through Section 208 of the federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1288. The erosion and sediment control plan shall become part of the terms and conditions of a permit and the provisions of the plan shall be carried

out where applicable in operations under the permit. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of section thirty, article six of this chapter.

(e) The well operator named in such application shall designate the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the State of West Virginia, upon whom notices, orders or other communications issued pursuant to this article may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the office of such termination and designate a new agent.

(f) The well owner or operator shall install the permit number as issued by the chief in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the chief.

(g) The chief shall deny the issuance of a permit if he or she determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation. In the event that the chief finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, he or she may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all work being conducted under the permit until the chief reinstates the permit, at which time the work may be continued. The chief shall make written findings of any such determination made by him or her and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to section twenty-five of this article. The chief shall make a written finding of any such determination.

(h) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or be confined in jail not more than one year, or both fined and confined.

§22-21-7. Consent and agreement of coal owner or operator.

(a) No permit shall be issued for a coalbed methane well unless and until the applicant has obtained and filed with the chief a consent and agreement from each owner and each operator of any workable coal seam in West Virginia twenty-eight inches or more in thickness which is within seven hundred fifty horizontal feet of the proposed well bore and:

(i) Which coal seam the applicant proposes to stimulate; or (ii) which coal seam is within one hundred vertical feet above or below a coal seam which the applicant proposes to stimulate.

The requirement for consent and agreement contained in this section shall not be considered to impair, abridge or affect any contractual rights or objections arising out of a contract or lease which provides for the development of coalbed methane and stimulation of wells between the applicant and any coal owner or operator and the existence of any such contract or lease shall constitute a waiver of the requirement to file an additional signed consent and agreement. Such consent and agreement must provide: (i) That such coal owner or operator has been provided with a copy of the application for permit as required by section six of this article and with a copy of all plats and documents which must accompany the application; and (ii) that such coal owner or operator consents and agrees to the stimulation of the coal seam as described in such application.

(b) In the absence of the applicant submitting the consent described in subsection (a) above, the applicant may submit a request for hearing before the board accompanied by an affidavit which shall include the following:

- (1) A statement that a coal owner or operator as described in subsection (a) of this section has refused to provide written authorization to stimulate the well;
- (2) A statement detailing the efforts undertaken to obtain such authorization;
- (3) A statement setting out any known reasons for the authorization not being provided; and
- (4) A statement or other information in addition to that provided pursuant to subdivision (5), subsection (b), section six of this article necessary to provide prima facie evidence that the proposed method of stimulation will not render the coal seam unworkable, or considering all factors, impair mine safety.

(c) Upon receipt of a request and affidavit as set forth in subsection (b) of this section, the chief shall forward the application to the board to consider the proposed stimulation, or if other objections or notices are filed requiring a hearing before the board, the request hereunder may be included for consideration by the board along with other matters related to the application.

(d) If the authorization of a coal owner or operator has been withheld based upon reasons related to safety, the chief shall, concurrent with submission of the request and affidavit to the board, submit a copy of the application to the director of the office of miners' health, safety and training who shall review the application as to issues of mine safety and within

thirty days submit recommendations to the board.

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§22-21-8. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless a bond is or has been furnished as provided in this section.

(b) A separate bond may be furnished for a particular coalbed methane well in the sum of \$5,000, payable to the State of West Virginia, conditioned on full compliance with all laws and rules relating to the drilling, operation and stimulation of such wells, to the plugging, abandonment and reclamation thereof, and for furnishing such reports and information as may be required by the chief.

(c) When an operator makes or has made application for permits to drill, operate or stimulate more than one coalbed methane well or a combination of coalbed methane wells and wells regulated under article one, chapter twenty-two-b of this code, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of \$5,000, payable to the State of West Virginia, and conditioned as stated in subsection (b) of this section.

(d) All bonds submitted hereunder shall have a corporate bonding or surety company authorized to do business in the State of West Virginia as surety thereon, or in lieu of a corporate surety, the operator may elect to deposit with the chief cash, collateral securities or any combination thereof as provided in subsection (d), section twenty-six, article six of this chapter.

(e) For purposes of bonding requirements, a coalbed methane well shall be treated as a well, as defined and regulated in article one, chapter twenty-two-b of this code, and the provisions of subsections (e), (g), (h), (i) and (j) of section twenty-six thereof shall apply.

§22-21-9. Notice to owners.

(a) Prior to filing an application for a permit for a coalbed methane well under this article, the applicant shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan to the following:

(1) The owners of record of the surface of the tract on which the coalbed methane well is to be located;

(2) The owners of record of the surface of any tract which is to be utilized for roads or other land disturbance;

(3) Each coal owner and each coal operator (i) from whom a consent and agreement provided for in section seven of this article is required, or (ii) whose coal seam will be penetrated by the proposed coalbed methane well or is within seven hundred fifty feet of any portion of the well bore; and

(4) Each owner and lessee of record and each operator of natural gas surrounding the well bore and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower. Notices to gas operators shall be sufficient if served upon the agent of record with the office of oil and gas.

(b) If more than three tenants in common or other coowners of interests described in subsection (a) of this section hold interests in such lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code; provided, that all owners and operators occupying or operating on the tracts where the well work is proposed to be located at the filing date of the permit application shall receive actual service of the documents required by subsection (a) of this section.

(c) Prior to filing an application for a permit for a coalbed methane well under this article, the applicant shall cause to be published in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the chief shall prescribe by rule, with the first publication date being no more than ten days after the filing of the permit application.

(d) Materials served upon persons described in subsections (a) and (b) of this section shall contain a statement of the methods and time limits for filing comment and objection, who may file comment and objection, the name and address of the chief with whom the comment and objection must be filed, the ability to obtain additional information from the chief, the fact that such persons may request notice of the permit decision, and a list of persons qualified to test water as provided in this section.

(e) Any person entitled to submit comment or objection shall also be entitled to receive a

copy of the permit as issued or a copy of the order denying the permit if such person requests the receipt thereof as a part of the comment or objection concerning said permit application.

(f) Persons entitled to notice may contact the district office of the office of oil and gas to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the office of oil and gas shall consult with the state and local health departments.

§22-21-10. Procedure for filing comments.

All persons described in subsection (a), section nine of this article may file comments with the chief as to the location or construction of the applicant's proposed well within fifteen days after the application is filed with the chief.

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§22-21-11. Objections or comments to coalbed methane wells by coal owner or operator; hearings.

The owner or operator of any coal seam whose interests may be adversely affected by a coalbed methane well may, within fifteen days from the receipt of notice required by section nine of this article, file objections in writing to such proposed drilling with the chief, setting out the grounds on which such objections are based.

§22-21-12. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

The chief shall review each application for a permit and shall determine whether or not a permit shall be issued.

No permit shall be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the permit application, including the erosion and sediment control plan, if required, and the plat required by section six of this article, and further files written statements of no objection by all such persons, the chief may issue the permit at any time.

The chief may cause such inspections to be made of the proposed location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned, including conditions with respect to the location of the well and access roads, prior to issuance if the chief determines that:

- (1) The proposed well work will constitute a hazard to the safety of persons; or
- (2) The plan for soil erosion and sediment control is not adequate or effective; or
- (3) Damage would occur to publicly owned lands or resources; or
- (4) The proposed well work fails to protect fresh water sources or supplies. Upon the issuance of any permit pursuant to the provisions of this article, the chief shall transmit a copy of such permit to the office of the assessor for the county in which the well is located.

§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;

(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 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.

§22-21-14. Protective devices required when a coalbed methane well penetrates workable coalbed; when a coalbed methane well is drilled through horizon of coalbed from which coal has been removed; notice of stimulation; results of stimulation.

(a) Except for those coalbeds which the coalbed methane operator proposes to complete for production of coalbed methane or where a ventilation hole is being converted to a well, when a well penetrates one or more workable coalbeds, the well operator shall run and cement a string of casing in the hole through the workable coalbed or beds in such a manner as will exclude all oil, gas or gas pressure as may be found in such coalbed or beds. Such string of casing shall be circulated and cemented in such a manner as provided for in reasonable rules promulgated by the chief in accordance with the provisions of chapter twenty-nine-a of this code. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth.

(b) When a coalbed methane well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest-sized casing to be used in the well and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing: Provided, That the liner may extend back to the surface and serve as the freshwater or coal protection casing, if done in accordance with subsection (a) of this section and section twenty-one, article six of this chapter, as applicable. If the liner is constructed in this manner, the next string of casing to be run into the well shall extend at least twenty feet below the coalbed. Cement shall be placed between that string of casing and the liner from the bottom of the casing to a point at least twenty feet above the coalbed. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest horizon penetrated and shall extend to a point not less than twenty feet above the highest horizon penetrated.

(c) At least five days prior to the stimulation of any coal seam the well operator shall give the coal owner and operator notice of the date and time of stimulation and shall allow the coal owner or operator to have an observer present at the site at the coal owner or operator's risk and cost. Within thirty days after stimulation is completed, the well operator shall certify the actual stimulation procedure used, including, but not limited to, the fluid injection rate, the injection pressure, the volume and components of fluid injected and the amount and components of the propping agent, if any.

(d) The chief may grant variances to the requirements of this section where the variance would promote the extraction of coalbed methane without affecting mine safety.

§22-21-15. Drilling units and pooling of interests.

(a) In the absence of a voluntary agreement, an operator, owner or other party claiming an ownership interest in the coalbed methane may file an application with the chief to pool: (i) Separately owned interests in a single tract; (ii) separately owned tracts; (iii) separately owned interests in any tract; and (iv) any combination of (i), (ii) and (iii) to form a drilling unit for the production of coalbed methane from one or more coalbed methane wells.

(b) The application for a drilling unit may accompany the application for a permit for a coalbed methane well or be filed as a supplement to the permit application. Such application shall be verified by the applicant and contain the following information for the proposed unit:

- (1) The identity of each well and operator as set out in the well permit application;
- (2) Each well number, if one has been assigned;
- (3) The acreage of the proposed unit, the identity and acreage of each separate tract to be included in the proposed unit and, where parts of tracts are included, the acreage of such parts;
- (4) The district and county in which the unit is located;
- (5) The names and addresses of all persons to whom notice must be provided under subsection (a), section sixteen of this article known to the applicant. When any coal seam is separately owned, the list of names shall identify such separate ownership giving the names of the separately owned seams;
- (6) A statement describing the actions taken by the applicant to obtain a voluntary agreement from each interest owner or claimant named in the application to whom notice must be provided under subsection (a), section sixteen of this article or any other owner or claimant who has notified the applicant of a claim from which agreement has not been obtained;
- (7) Other pertinent and relevant information as the chief may prescribe by rules.

(c) The application for a drilling unit shall be accompanied with the following:

(1) A plat prepared by a licensed land surveyor or registered professional engineer showing the location of the coalbed methane well or wells, or proposed well or wells, the boundary and acreage of the proposed drilling unit, the boundary and acreage of each tract contained in the unit and, where parts of tracts are included, the boundary and acreage of such parts, a name identification of each tract and the district and county in which the unit is located. All boundaries must be shown with courses and distances;

(2) A permit application fee of \$250;

(3) A certificate by the applicant that the notice requirements of section sixteen of this article were satisfied by the applicant. Such certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;

(4) An estimate of the cost, or the actual cost if known, of drilling, completing and equipping, operating, plugging and abandoning any well or wells in the proposed unit.

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§22-21-16. Notice to owners.

(a) At least thirty days prior to the date set for hearing under section seventeen of this article, the applicant shall deliver by personal service or by certified mail, return receipt requested, notice to the following:

(1) Each coal owner of record and coal operator of record of any coal seam underlying any tract or portion thereof which is proposed to be included in the unit;

(2) Each owner and lessee of record and each operator of natural gas surrounding the well bore and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower. Notices to gas operators shall be sufficient if served upon the agent of record with the Office of Oil and Gas; and

(3) Any coalbed methane owner to the extent not otherwise named which interest arises from a deed, lease, contract, will, inheritance or other instrument of record wherein a person or entity identified in subdivision (1) or (2), subsection (a) of this section or the predecessor in title to such person or entity, expressly granted, leased, reserved or conveyed coalbed methane.

(b) At least thirty days prior to the date set for the hearing under section seventeen of this article, the applicant shall publish a notice by a Class II legal advertisement in the county or counties in which the well unit is to be located. The legal advertisement shall contain the information required by subsection (c) and any other information as the chief shall prescribe by rule.

(c) The notice required by this section shall specify a time and place for a conference and a hearing on this application, shall advise the persons notified that the applicant has filed an application for a drilling unit for the production of coalbed methane, that they may be present and object or offer comments to the formation of the proposed unit and shall be accompanied with copies of: (i) The permit application for the coalbed methane well; (ii) the permit application for the drilling unit; and (iii) the plat of the drilling unit. However, in the case of the notice required by subsection (b) of this section, only the address of where an interested party can obtain such copies is required to be published.

(d) Notice by the applicant to all persons to whom notice must be provided under subsection (a) of this section and notice by publication as provided by subsection (b) of this section shall be deemed to include, and shall be deemed to be sufficient notice to, all potential claimants to ownership of the coalbed methane.

§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.

(a) Prior to the time fixed for a hearing under subsection (b) of this section, the board shall also set a time and place for a conference between the proposed applicant to operate a coalbed methane drilling unit and all persons to whom notice has been given under subsection (a), section sixteen of this article who have not entered into a voluntary agreement. At such conference the applicant and such other persons present or represented having an interest in the proposed unit shall be given an opportunity to enter into voluntary agreements for the development of the unit upon reasonable terms and conditions.

No order may be issued by the board as to any unit unless the applicant submits at the hearing a verified statement setting forth the results of the conference. If agreement is reached with all parties to the conference, the board shall find the unit is a voluntary unit and issue an order consistent with such finding.

(b) The review board shall, upon request of a proposed applicant for a drilling unit or upon request of a coal owner or operator, provide a convenient date and time for a hearing on the application for a drilling unit, which hearing date shall be no sooner than thirty-five days nor more than sixty days of the date the request for hearing is made. The review board shall review the application and on the date specified for a hearing shall conduct a public hearing. The review board shall take evidence, making a record thereof and consider:

- (1) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells;
- (2) The plan of development of the coal and the need for proper ventilation of any mines or degasification of any affected coal seams;
- (3) The nature and character of any coal seam or seams which will be affected by the coalbed methane well or wells;
- (4) The surface topography and property lines of the lands underlaid by the coal seams to be included in the unit;
- (5) Evidence relevant to the proper boundary of the drilling unit;
- (6) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;
- (7) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well or wells within the unit; and if so, whether such applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;
- (8) Whether a disagreement exists among the coalbed methane owners or claimants over the

designation of the operator for any coalbed methane wells within the unit and, if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the unit for the benefit of the majority of the coalbed methane owners;

(9) If more than one person is interested in operating a well within the unit, the estimated cost submitted by each such person for drilling, completing, operating and marketing the coalbed methane from any proposed well or wells; and

(10) Any other available geological or scientific data pertaining to the pool which is proposed to be developed.

(c) The review board shall take into account the evidence introduced, comments received and any objections at the hearing, and if satisfied that a drilling unit should not be established, shall enter an order denying the application. If the review board is satisfied that a drilling unit should be established, it shall enter a pooling order establishing a drilling unit. Such pooling order shall:

(1) Establish the boundary of the proposed unit, making such adjustment in the boundary as is just;

(2) Authorize the drilling and operation of a coalbed methane well or wells for production of coalbed methane from the pooled acreage;

(3) Establish minimum distances for any wells in the unit and for other wells which would drain the pooled acreage;

(4) Designate the operator who will be authorized to drill, complete and operate any well or wells in the unit;

(5) Establish a reasonable fee for the operator for operating costs, which shall include routine maintenance of the well and all accounting necessary to pay all expenses, royalties and amounts due working interest owners;

(6) Such other findings and provisions as are appropriate for each order.

(d) The operator designated in such order shall be responsible for drilling, completing, equipping, operating, plugging and abandoning the well, shall market all production therefrom, shall collect all proceeds therefor and shall distribute such proceeds in accordance with the division order issued by the review board.

(e) Upon issuance of the pooling order, the coalbed methane owners or any lessee of any such owners or any claimants thereto may make one of the following elections within thirty days after issuance of the order:

(1) An election to sell or lease its interest to the operator on such terms as the parties may agree, or if unable to agree, upon such terms as are set forth by the board in its order;

(2) An election to become a working interest owner by participating in the risk and cost of the well; or

(3) An election to participate in the operation of the well as a carried interest owner.

Any entity which does not make an election within said thirty days prescribed herein shall be deemed to have elected to sell or lease under subdivision (1) of this subsection.

(f) The working interest in the well shall include: (i) The right to participate in decisions regarding expenditures in excess of operating costs, taxes, any royalties in excess of one-eighth, and other costs and expenses allowed in the pooling order; and (ii) the obligation to pay for all expenditures. The working interest shall exist in: (i) All well operators and owners who participate in the risk and cost of drilling and completing the well; and (ii) carried interest owners after recoupment provided in subsection (h) of this section. The working interest owners' net revenue share shall be seven eighths of the proceeds of sales of coalbed methane at the wellhead after deduction of operating costs, taxes, any royalties in excess of one-eighth and other costs and expenses allowed in a pooling order. Unless the working interest owners otherwise agree, the working interest owners shall share in all costs and decisions in proportion to their ownership interest in the unit. If any working interest owner deposits or contributes amounts in the escrow account which exceed actual costs, such owner shall be entitled to a refund; and if amounts deposited or contributed are less than actual costs, such owner shall make a deposit or contribution for the deficiency.

(g) The royalty interest in a well shall include the right to receive one eighth of the gross proceeds resulting from the sale of methane at the wellhead and such interest shall exist in the coalbed methane owners: Provided, That any coalbed methane owner who in good faith has entered a lease or other contract prior to receiving notice of an application to form the drilling unit as provided herein shall be entitled to such owner's fractional interest in the royalty calculated at a rate provided for in such contract. Each such owner shall be entitled to share in the royalty in proportion to his or her fractional interest in the unit.

(h) Where a coalbed methane owner elects to become a carried interest owner, such owner shall be entitled to his or her proportionate share of the working interest after the other working interest owners have recouped three hundred percent of the reasonable capital costs of the well or wells, including drilling, completing, equipping, plugging and abandoning and any further costs of reworking or other improvements of a capital nature.

(i) Each pooling order issued shall provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to any conflicting interests shall be deposited and held for the interest of the claimants as follows:

(1) Each participating working interest owner, except for the operator, shall deposit in the escrow account its proportionate share of the costs allocable to the ownership interest claimed by such working interest owner.

(2) The operator shall deposit in the escrow account all proceeds attributable to the conflicting interests of any coalbed methane owners who lease, or are deemed to have leased, their interest, plus all proceeds in excess of operational expenses, as allowed in the pooling order, attributable to the conflicting working and carried interest owners.

(j) After each coalbed methane owner has made, or has been deemed to have made, an election under subsection (e) of this section, the review board shall enter a division order which shall set out the net revenue interest of each working interest owner, including each carried interest owner and the royalty interest of each coalbed methane owner. Thereafter payments shall be made to working interest owners, carried interest owners and royalty interest owners in accordance with the division order, except that payments attributable to conflicting claims shall be deposited in the escrow account. The fractional interest of each owner shall be expressed as a decimal carried to the sixth place.

(k) Upon resolution of conflicting claims either by voluntary agreement of the parties or a final judicial determination, the review board shall enter a revised division order in accordance with such agreement or determination and all amounts in escrow shall be distributed as follows:

(1) Each legally entitled working interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests;

(2) Each legally entitled carried interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests, after recoupment of amounts provided in subsection (h) of this section;

(3) Each legally entitled entity leasing, or deemed to have leased, its coalbed methane shall receive a share of the royalty proceeds attributable to the conflicting interests; and

(4) The operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.

(l) The review board shall enact rules for the administration and protection of funds delivered to escrow accounts.

(m) No provision of this section or article shall obviate the requirement that the coal owner's consent and agreement be obtained prior to the issuance of a permit as required under section seven of this article.

§22-21-18. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, are hereby deemed to be operations on each separately owned tract in the drilling unit by the several owners. That portion of the production allocated to a separately owned tract included in a drilling unit is hereby deemed to be produced from that tract.

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§22-21-19. Validity of unit agreements.

No agreement between or among coalbed methane operators or owners entered into for the development of coalbed methane or forming drilling units therefor may be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

WV Legislature

§22-21-20. Spacing.

No coalbed methane well may be drilled closer than one hundred feet of the outermost boundary of the coalbed methane tract, leased premises, or unit from which coalbed methane is or will be produced or within one thousand six hundred linear feet of the location of an existing well or a proposed well for which a permit application is on file, unless all owners and operators of any affected workable coal seams agree in writing. Affected workable coal seams for purposes of this section shall be those which will be penetrated or those seams more than twenty-eight inches in thickness from which production is targeted. Spacing shall otherwise be as provided in a pooling order issued by the chief, an order establishing special field rules or an order issued by the review board.

§22-21-21. Dry or abandoned wells.

Any coalbed methane well which is completed as a dry hole or which has not produced coalbed methane in paying quantities for a period of twelve consecutive months shall be presumed to have been abandoned and the operator shall promptly plug the well and reclaim all surface land affected by the well in accordance with the provisions of this article, unless the operator furnishes satisfactory proof to the chief that there is a bona fide future use for such well in accordance with the rules promulgated under article six of this chapter.

§22-21-22. Notice of plugging and reclamation of well; right to take well; objection; plugging order; plugging for mine-through.

(a) Prior to the commencement of plugging operations the operator shall give thirty days' advance notice to the chief and to all coal owners and operators whose names and addresses would be required for a permit application under subdivision (2), subsection (b), section six of this article as of the date of the notice. Such notice shall set out the number and other identification of the well, a copy of the well plat, the date plugging will commence, and the manner and method of plugging.

(b) Any coal owner or operator whose coal seam is affected by such well shall have the following rights:

(1) To convert the well to a vent hole or otherwise take the well. In such event the chief, upon determination that the coal owner or operator has placed the well under a mining permit, shall release the well operator's bond and the well operator shall be relieved of further responsibility for the well; and

(2) To file comment or objection with the chief, within fifteen days after receipt of notice of intent to plug, with respect to the proposed manner or method of plugging. The chief shall consider any such comment or objection and issue an order specifying the manner and method of plugging and reclamation.

(c) Whenever any coalbed methane well is located in that portion of a coal seam which will be mined within six months, the well operator shall, within sixty days after notice from the coal owner or coal operator that the well is to be mined through, plug the well in such manner that the well can be safely mined through.

§22-21-23. Method of plugging.

All coalbed methane wells shall be plugged in such a manner that any workable coal seam surrounding the well can be safely mined and that the well can be mined through. The chief shall promulgate rules specifying the manner and method of plugging coalbed methane wells and in doing so, or in entering any order for such plugging and reclamation, shall give special consideration to the ability to mine any affected coal seam safely and the protection of any affected coal seam for future mining.

WV Legislature

§22-21-24. Existing mining rights.

Nothing in this article shall be construed to affect the mining and other property rights of any coal owner nor shall any provision of this article be construed to preclude a coal operator from removing support of the surface and any structure or facilities thereon and other strata as such rights may exist in any severance deed or other contract.

WV Legislature

§22-21-25. Judicial review; appeal to Supreme Court of Appeals; legal representation for review board.

(a) Any person adversely affected by an order of the chief or review board is entitled to judicial review. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern the judicial review.

(b) The judgment of the circuit court is 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.

(c) Legal counsel and services for the chief or review board in all appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any circuit court by the prosecuting attorney of the county, all without additional compensation. The chief or review board, with the written approval of the Attorney General, may employ special counsel to represent the chief or review board at any appeal proceedings.

§22-21-26. Limitation on actions in trespass.

In any case where title to subsurface minerals has been severed in such a way that title to natural gas underlying such tract and title to coal underlying such tract are in different persons, it shall be an affirmative defense to any action for willful trespass arising from the drilling and commercial production of methane from any coal seam underlying such tract, that the operator of such well permitted, drilled and completed such well under color of title of any instrument, deed, or lease for oil and gas purposes from the gas owner, or an instrument, deed or lease for coal mining purposes from the coal owner.

§22-21-27. Injunctive relief.

(a) Whenever it appears to the chief or review board that any person has been or is violating or is about to violate any provision of this article, any rule promulgated by the chief or review board, any order or any final decision of the chief or review board, the chief or review board may apply, in the name of the state, to the circuit court of the county in which the violation occurred, is occurring or is about to occur, or to the judge thereof in vacation, for injunctive relief against the person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, in violation, enjoining the violation or violations. The application may be made and prosecuted to conclusion whether any violation or violations have resulted or may result in prosecution or conviction under the provisions of section six or twenty-eight of this article.

(b) Upon application by the chief or review board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the rules promulgated by the chief or review board and all orders of the chief or review board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state may not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals.

(d) The chief or review board shall be represented in all such proceedings by the Attorney General or his or her assistants and in proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The chief or review board, with the written approval of the Attorney General, may employ special counsel to represent the chief or review board in any proceedings.

(e) If the chief or review board refuses or fails to apply for an injunctive relief to enjoin a violation or threatened violation of any provision of this article, any rule promulgated by the chief or review board hereunder or any order or final decision of the chief or review board, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his or her own behalf for an injunction to enjoin the violation or threatened violation in any court in which the chief or review board might have brought suit. The chief or review board shall be made a party defendant in the application in addition to the person or persons violating or threatening to violate any provision of this article, any rule promulgated by the chief or review board hereunder or any order of the chief or review board. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the chief or review board.

§22-21-28. Penalties.

(a) Any person who violates any term or condition of a permit issued under this article, and the violation is found by the chief or review board to have rendered unmineable all or a portion of a workable coal seam, is subject to civil penalties, to be imposed and collected by the chief or review board in an amount not to exceed the reasonably expected net profit lost to the coal owner as a result. All penalties collected shall be transferred to the special reclamation fund as provided by section twenty-nine, article six of this chapter.

(b) Any person who violates any provision of this article, any of the rules promulgated by the chief or review board or any order of the chief or review board other than a violation governed by the provisions of subsection (c) of this section, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000.

(c) Any person who, with the intention of evading any provision of this article, any of the rules promulgated by the chief or any order of the chief or review board, who makes or causes to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(d) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules promulgated hereunder or any order or final decision of the chief or review board or director, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.

§22-21-29. Construction.

This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

WV Legislature