WEST VIRGINIA CODE CHAPTER 22 ARTICLE 33

WV Legislature

§22-33-1. Short title.

This article shall be known and cited as the Geothermal Resources Act.

WV Legislature

§22-33-2. Legislative findings; declaration of policy.

(a) The Legislature finds that:

(1) A geothermal resource is a reservoir inside the Earth from which heat can be extracted economically compared to other conventional sources of energy and used for generating electric power or any other suitable industrial, commercial, agricultural, residential, or domestic application in the future;

(2) Geothermal resources vary widely from one location to another depending on the temperature and depth of the resource; and

(3) The secretary should have broad authority to develop a regulatory program for geothermal resources to meet the economic needs of the state and to protect the public interest.

(b) The Legislature declares that the establishment of a new regulatory program to address the exploration, development, and production of geothermal resources in this state is in the public interest and should be done in a manner that protects the environment and our economy for current and future generations.

WV Legislature

§22-33-3. Applicability; exceptions.

The provisions of this article shall apply to geothermal resources at temperatures and volumetric flow rates established by the secretary by legislative rule: *Provided*, That this article shall not apply to geothermal heating and cooling heat pump systems for private residential dwellings and farm buildings and any geothermal system regulated pursuant to section 10 of the Bureau of Public Heath legislative rule for Water Well Design Standards, 64 CSR 46 or any horizontal system with a depth of less than 30 feet.

WV Legislature

§22-33-4. Ownership of geothermal resources.

(a) Ownership of any geothermal resource is vested in the owner of the surface property overlying the geothermal resource unless severance of the geothermal resource is clear and unambiguous in an instrument conveying or reserving ownership of the geothermal resource.

(b) No mineral or water estate shall be construed to include any geothermal resource unless clearly and unambiguously included in an instrument reserving or conveying the geothermal resource.

(c) Nothing in this article shall divest any person or the state of any right, title, or interest they might have in any geothermal resource.

(d) Nothing in this article may be construed as vesting in the secretary the jurisdiction to adjudicate property rights disputes.

WV Legislature

§22-33-5. Definitions.

As used in this article:

(a) “Correlative right” means the right of each geothermal owner in a geothermal system to produce without waste his or her just and equitable share of the geothermal resource in the geothermal system.

(b) “Geothermal energy” means the usable energy that is produced or that can be produced from a geothermal resource.

(c) “Geothermal resource” means the natural heat of the earth and the energy, in whatever form, that is present in, associated with, or created by, or that may be extracted from, such natural heat, as determined by the secretary by legislative rule.

(d) “Geothermal system” means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources.

(e) “Secretary” means the Secretary of the Department of Environmental Protection or his or her designee as provided in article one of this chapter.

WV Legislature

§22-33-6. Geothermal resources permit required.

It is unlawful for any person to commence any work relating to the exploration, development, or production of geothermal resources without first obtaining a well permit from the secretary pursuant to this article.

WV Legislature

§22-33-7. Jurisdiction of the secretary; powers and duties; geothermal resources regulatory program.

(a) The secretary is vested with jurisdiction over all aspects of this article and has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary shall develop a regulatory program for the exploration, development, and production of geothermal resources in this state. The regulatory program promulgated by the secretary shall include, but not be limited to, the following:

(1) Application for a permit on a form prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the permit application;

(2) A procedure for reviewing a permit application and issuance of decision to grant or deny a permit;

(3) A procedure allowing the public to comment on a permit application prior to issuance of a decision by the secretary;

(4) A permit term not to exceed five years;

(5) A procedure to renew or modify permits on forms prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the renewal or modification;

(6) Fees for permit applications and for permit renewals and modifications;

(7) A procedure to suspend or revoke permits;

(8) Standards for developing, drilling, plugging, and reclaiming well sites;

(9) Guidelines for the safe disposal of spent geothermal fluids and other unusable or contaminated fluids generated in the production of geothermal resources;

(10) Standards to ensure protection of all water resources of this state; and

(11) Inspections and investigations to ensure compliance with any provision in this article or rule or permit or order issued by the secretary.

WV Legislature

§22-33-8. Civil penalties.

Any person who knowingly violates any provision of this article or rule promulgated hereunder or order or permit issued pursuant to this article is a liable for a civil penalty of not less than $100 nor more than $500 for each violation.

WV Legislature

§22-33-9. Administrative orders; injunctive relief.

(a) When the secretary determines, on the basis of any information, that a person is in violation of any requirement of this article or rule promulgated thereunder, the secretary may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha County for appropriate relief, including a temporary or permanent injunction. The secretary or the Environmental Quality Board may stay any order issued by the secretary until the order is reviewed by the Environmental Quality Board.

(b) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements, and otherwise enforce this chapter, the secretary shall propose a rule for legislative approval to establish a mechanism for the administrative resolution of violations set forth in this article through consent order or agreement as an alternative to instituting a civil action.

WV Legislature

§22-33-10. Appeal to Environmental Quality Board.

Any person aggrieved or adversely affected by an action, decision, or order of the secretary made and entered in accordance with the provisions of this article may appeal to the Environmental Quality Board pursuant to the provisions of §22B-1-1 *et seq*. of this code.

WV Legislature

§22-33-11. Judicial review.

Any person or the secretary aggrieved or affected by a final order of the Environmental Quality Board is entitled to judicial review thereof pursuant to the provisions of §29B-1-9 of this code.

WV Legislature

§22-33-12. Rulemaking.

The secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement and carry out the provisions of this article.

WV Legislature